

(26,881, 26,882)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 795.

JOSEPH STILSON, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

No. 796.

JOSEPH SUKYS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF PENNSYLVANIA.

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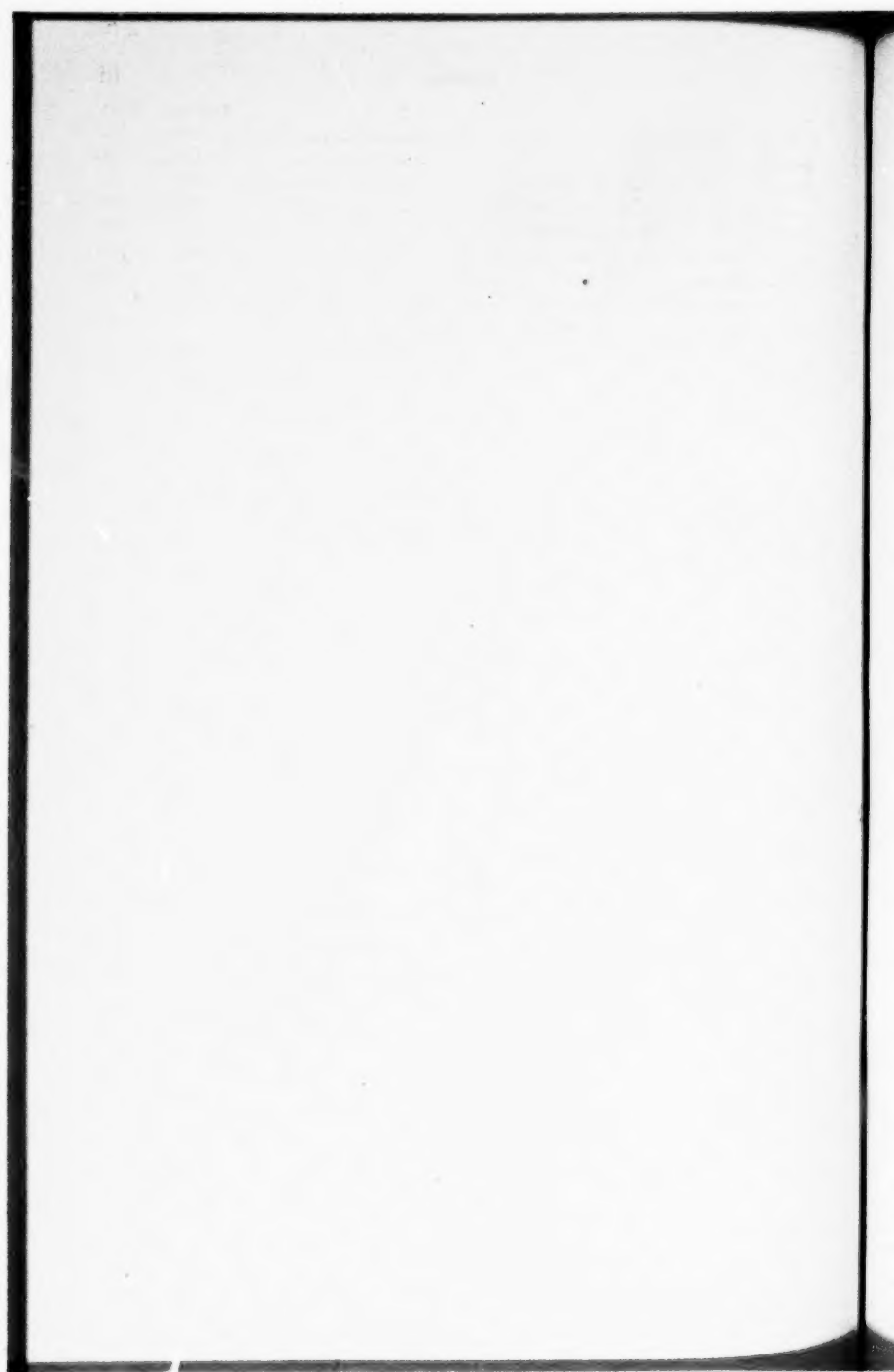
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1 *Docket Entries in the District Court of the United States for
the Eastern District of Pennsylvania.*

No. 114, June Term, 1918.

Francis Fisher Kane.
Owen J. Roberts.

UNITED STATES

vs.

H. J. Gibbons and Henry J.
Nelson for Joseph V. Stilson
and Joseph Sukys.

JOSEPH V. STILSON, JOSEPH
SUKYS, K. VIDIKAS, and J. V.
STALIORAITIS.

Sept. 12, 1918.	True Bill.
Oct. 1, 1918.	Joseph V. Stilson and Joseph H. Sukys plead not guilty.
" 1, "	Jury called. Trial as to Joseph V. Stilson and Joseph H. Sukys.
" 1, "	Witnesses sworn.
" 2, "	Witnesses sworn.
" 3, "	Witnesses sworn.
" 4, "	Verdict "Guilty" as to defendants Joseph V. Stilson and Joseph Sukys.
" 4, "	Order of Court to furnish Jurors with meals and lodging filed.
" 4, "	Order of Court to take recognizance of defendant in \$10,000 filed, as to J. V. Stilson.
" 4, "	Justification of sureties filed.
" 4, "	Recognizance of defendant with Felix White, Karol Statkevicz, Sabos Mankus and Frank Raul, sureties in \$10,000 for his appearance on October 5, 1918, taken, acknowledged and filed.
" 8, "	Appearance of H. J. Gibbons and Henry J. Nelson, Esqs., for defendants Joseph V. Stilson and Joseph Sukys, filed.
" 8, "	Motion and reasons for New Trial filed.
" 11, "	Order of Court to take recognizance of defendant Joseph Sukys, filed.
" 11, "	Justification of Surety filed.
" 11, "	Recognizance of defendant with Stanley Czeleden surety in \$1500.00 for defendant's appearance October 12, 1918 and thereafter etc., filed.
" 14, "	Subpœna to M. Malcolm, U. S. witness returned "served" and filed.
" 14, "	Subpœna to George Mitchell, U. S. witness, returned "served" and filed.

- Oct. 14, 1918. Subpoena to T. J. Buragas, U. S. witness, returned "served" and filed.
- Nov. 8, 1918. Argued sur motion for New Trial.
- " 26, " Opinion, Dickinson, J., discharging Rule for New Trial, filed.
- Dec. 6, 1918. Sentence as to Joseph V. Stilson: Imprisonment in Maryland State Penitentiary, Baltimore, Md., for three years, from this 6th day of December, 1918.
- " Bill of Exceptions as to Jos. V. Stilson & Joseph Sukys filed. Order of Court sealing Bill of Exceptions filed.
- " 6, " Justification of surety as to Salus Mankus, Frank Laur, Felix White and Karol Statkevicz filed.
- " 6, " Order of Court to take recognizance of defendant in \$10,000, filed.
- " 6, " Recognizance of J. V. Stilson, with Salus Mankus, et al., sureties, in \$10,000, filed.
- " 6, " Assignments of Error as to Joseph V. Stilson, filed.
- " 6, " Petition for Writ of Error as to Joseph V. Stilson, filed.
- " 6, " Order of Court granting prayer of Petition filed.
- " 6, " Bond for costs as to Joseph V. Stilson and Joseph Sukys in \$250, filed.
- " 6, " Order of Court approving Bond for costs filed.
- " 6, " Writ of Error as to Joseph V. Stilson to Supreme Court allowed and copy thereof lodged in Clerk's office for adverse party.
- " 6, " Citation allowed and issued.
- " 6, " Sentence as to Joseph Sukys: Imprisonment in Mercer County Jail at Trenton, N. J. for three months from this 6th day of December, 1918.
- " 6, " Justification of surety filed.
- " 6, " Order of Court to take recognizance of Joseph Sukys with Stanley Czeleden, surety, filed.
- " 6, " Recognizance of defendant with Stanley Czeleden surety in \$1500.00 filed.
- " 6, " Assignments of Error filed as to Joseph Sukys.
- " 6, " Petition for Writ of Error filed.
- " 6, " Order of Court allowing Writ of Error, filed.
- " 6, " Writ of Error as to Joseph Sukys to Supreme Court of United States allowed and copy thereof lodged in Clerk's office for adverse party.
- " 6, " Citation allowed and issued.
- " 11, " Præcipe for Transcript of Record filed.
- " 21, " Affidavit as to service of Citation as to Joseph V. Stilson, filed.
- " 21, " Affidavit as to service of Citation as to Joseph Sukys, filed.

3 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said District Court before you, or some of you, between United States of America, Plaintiff, and Joseph V. Stilson, Defendant, a manifest error hath happened, to the great damage of the said Joseph V. Stilson as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington, D. C. within thirty days, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, at Philadelphia the sixth day of December, in the year of our Lord one thousand nine hundred and eighteen.

[Seal of the District Court of the United States, E. D. Penna.]

GEORGE BRODBECK,
*Clerk of the District Court
of the United States.*

Allowed by
OLIVER B. DICKINSON,
*Judge United States District Court,
Eastern District of Pennsylvania.*

4 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said District Court before you, or some of you, between United States of America, Plaintiff, and Joseph Sukys, defendant, a manifest error hath happened, to the great damage of the said Joseph Sukys as by this complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full — speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington, D. C. within thirty days, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, at Philadelphia the sixth day of December, in the year of our Lord one thousand nine hundred and eighteen.

[Seal of the District Court of the United States, E. D. Penna.]

GEORGE BRODBECK,
Clerk of the District Court
of the United States.

Allowed by

OLIVER B. DICKINSON,
Judge United States District Court,
Eastern District of Pennsylvania.

5 District Court of the United States, Eastern District of Pennsylvania.

No. —.

UNITED STATES OF AMERICA

vs.

JOSEPH V. STILSON, JOSEPH SUKYS, K. VIDEKAS, and J. V.
STALIORAITIS.

Indictment.

(Filed Sept. 12, 1918.)

Count 1.

(Title I, Sec. 4, Act June 15, 1917, in Connection with Sec. 3 of Act.)

The Grand Inquest of the United States of America, inquiring in and for the Eastern District of Pennsylvania, upon their respective oaths and affirmations, respectively do present that throughout the period of time from June 15, 1917, to the day of the filing and pre-

sentation of this indictment, the United States has been at war with the Imperial German Government:

That continuously throughout said period of time, Joseph V. Stilson, Joseph Sukys, K. Vididas and J.V. Stalioraitis (hereinafter called the defendants), then and there being members of an organization known as Lithuanian Socialist Federation, unlawfully and feloniously have conspired, combined, confederated and agreed together, and with one Paul Sandargas and other persons to this grand inquest unknown, to commit a certain offence against the United States, to wit: the offense of unlawfully, feloniously and wilfully causing and attempting to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States, when the United States was at war, and this through and by means of personal solicitations, of public speeches, of articles, editorials, captions and headlines, printed in a certain newspaper called "Kova," circulating throughout the United States, of the public

distribution of a certain leaflet, entitled "Neikime I Kariumene," and of the public distribution of another leaflet entitled, "Nurodymai Saukiamiens I Kariumene," which said solicitation, speeches, articles, editorials, captions, headlines, and leaflets persistently urged insubordination, disloyalty, mutiny and refusal of duty in said military and naval forces:

And another offense against the United States, to wit: the offense of unlawfully, feloniously and wilfully obstructing the recruiting and enlistment service of the United States, when the United States was at war, to the injury of that service and of the United States:

And this through and by means of said solicitations, speeches, articles, editorials, captions, headlines and leaflets, persistently urging the failure and refusal on the part of available persons to enlist in the military and naval forces of the United States:

And the grand inquest aforesaid further present that in order to effect the object of the said conspiracy, the said defendants, at the several times and places in that behalf hereinafter mentioned in connection with their names, have done certain acts, that is to say:

7

Overt Acts.

L. On or about August 15, 1917, at Philadelphia, in the Eastern District of Pennsylvania aforesaid, the said Joseph V. Stilson composed a certain leaflet in the Lithuanian language entitled "Neikims I Kariumene," a true and correct copy of which is as follows, to wit:

(Here follows reproduction marked 1, p. 8.)

9 and a true and correct translation of which into English is as follows:

10 Let Us Not Go to the Army.

FELLOW WORKERS: Before us stands compulsory conscription. Those who are called, if they are fit, and are not otherwise exempt, will be taken into the army by force. Those called to the army will not be allowed to think, but will be forced to obey the orders of their superiors.

There has come an era to this country when the rights of the citizens mean nothing. The working men's press, speaking the truth, is constrained in all possible ways; anti-war meetings are prohibited; men preaching most truthfully the causes of the war and not willing to submit to the tyrannical laws are being thrown into prison. Under these circumstances, it behooves us, to address you fellow workers by these proclamations.

War, compulsory conscription and laws of all kinds restricting the rights of the working men are being passed because our capitalist exploiters desire to make more profits. The whole present world war is nothing more than the cruel play of the capitalists of the warring countries and other exploiters for the purpose of gaining wealth from the lives of the people of their own countries. While the working men of the different countries are being torn to pieces on the field of battle and are dying most horrible deaths, at the same time the exploiters, wading in the blood of the slain working men, fill their pockets with shining golden coins. The working men shed their blood, lose their lives and their exploiters find for themselves mountains of gold in the blood and shattered humanity. It is evident that it is necessary to employ weapons, ammunition, food and clothing for the soldiers in war. For all of this the governments pay the capitalists well. War brings death to the working men and profit to the capitalists.

This war was declared against the will of the people; it is being carried on for the profit of the exploiters to the utter ruin of the people. The compulsory conscription law was enacted against the will of the people and the protests of the intelligent working men. Notwithstanding the fact that the law has been enacted the duty of us working men is: to uncompromisingly demand the immediate termination of the war and the repeal of the compulsory conscription and other kinds of tyrannical laws.

Since the government has enacted the compulsory conscription law against the will of the people, a protest alone against this law is insufficient. To such a law enacted against our will and the Constitution of the United States, we must not submit. Those who are called to the army should endeavor by all possible means to exempt themselves. If that is impossible and if it is impossible to escape then, rather than enter the army—go to prison. To the intelligent working man the garb of the convict is by far more honorable than the uniform of the murderous soldier.

Fellow workers, let us not allow the exploiters to convert us into the murderers of the working men of other countries.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Down with the war and compulsory conscription! Long live peace and the will of the people!

(Signed) **PEACE DEMANDING WORKING MEN.**

12

A Few Suggestions.

1. Those who have registered should immediately find out from their Exemption Board whether they are called to the army. 2. If he who is called has not his first citizenship papers, it is then necessary to make a claim for exemption. Those not having first papers will not be taken into the army if they make claim. 3. Citizens and those having first papers, if physically fit and unmarried and not having anyone dependent upon their labor (which fact must be positively proven), without waiting for anything should immediately abscond, otherwise they will be taken into the army.

13

2. On or about August 15, 1917, the said Joseph V. Stilson made or caused to be made, by the process of mimeographing, a number of copies of said leaflet, at the city of Philadelphia in the Eastern District of Pennsylvania aforesaid:

3. On or about August 24, 1917, the said Joseph V. Stilson, at Philadelphia in the Eastern District of Pennsylvania aforesaid, did utter and publish a large number, to wit: 28 copies of the said leaflet:

4. On or about August 24, 1917, at Philadelphia in the Eastern District of Pennsylvania aforesaid, the said Joseph V. Stilson did cause to be delivered to Paul Sandargos at the city of Wilkesbarre, Luzerne County, Pennsylvania, a large number, to wit: 25 copies of the said leaflet:

5. On or about August 24, 1917, the said Joseph V. Stilson did cause to be delivered copies of the said leaflet to divers other persons, to wit: to one Joseph Kaminsky at Binghamton, Broome County, New York, and to John Burak, Alex Volingavicz, Benjamin Giboviez and divers other persons to this grand inquest unknown, at Wilkesbarre, Luzerne County, Pennsylvania:

6. The said Paul Sandargos, on August 26, 1917, at Wilkesbarre, Luzerne County, Pennsylvania, did induce, hire and employ one George Mitchell to give and distribute to John Burak, Alex Volingavicz, Benjamin Giboviez and others whose names are to this grand inquest unknown, 25 copies of the said leaflet:

14

7. That said Joseph V. Stilson, Joseph Sukys, K. Vidikas and J. V. Stalioraitis, on July 20, 1917, at Philadelphia, in the Eastern District of Pennsylvania aforesaid, did cause to be printed, published and circulated in the issue of the newspaper "Kova" of that date, in the Lithuanian language, among other matters, two editorials, a true and correct copy of which is as follows, to wit:

(Here follows reproduction marked 2, p. 15.)

16 and a true and correct translation of which into English is as follows:

17 Editorial.

For Those Called to the Army.

It has already been set forth in the "Kova" how the English Government is treating the conscientious objectors against war. At first they punished them severely, even threatening them with being shot. Later, however, they relaxed, and now certain opponents of war are released entirely from military service while others are required to perform other war duties; those who do not agree to perform war work are usually put in prison. Recently articles appeared in the newspapers to the effect that England is also exempting from military duty those Socialists who show that their principles forbid them to kill their brothers, the workmen of other countries.

America's bourgeoisie newspapers write that England has made a mistake in exempting the conscientious objectors from military service. They say England would have done better if they had sent the opponents of war to the war front with the rest. England has set a bad example to America's "slackers." (Those not desiring to go to war.)

It is stated that in England there were very few conscientious objectors against war, nevertheless, they have caused the government and the military authorities great annoyance. However, in England only those who can prove that they were opposed to war before the enactment of the compulsory military service law, are exempt from service in the Army. Aside from other questions, nearly every "slacker" in England is asked: "Would you not defend your mother, if someone attacked her?" This is regarded as a very clever

18 question by which it is possible to confuse a large number of "slackers." It is known that in America likewise very similar clever questions will be asked, but, we think our Comrades will know how to answer them with proper Socialistic arguments.

Advice to Registrants.

In various places there have been established so-called Exemption Boards (Bureaus of Exemption). These exemption boards announce to registrants their serial number; and the registrants should demand such notice.

The final arrangements are being made in Washington for the drawing of the numbers by lottery. Those whose numbers are drawn will have to serve in the Army and will immediately be called by the District Exemption Board; in addition to this, their numbers will be published in the local newspapers. The drafted men will first be examined physically (medically) to ascertain whether they are fit as soldiers. Every one must report for physical examination. Those who do not report for physical examination regardless of anything will be drafted into the Army.

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Only after the physical examination will it be possible to claim on proper grounds, exemption from the Army and war. However, such claims can only be submitted to the local Exemption Boards within a period of ten days after the notice to appear. Those who do not file any claims within that ten days will be drafted 19 into the Army, if fit. No attention will be paid to any later claims.

Claim should be made on the proper blanks furnished for that purpose and must be witnessed by a Notary.

If the local Exemption Board should set aside the claim, it will be possible to appeal to the District Exemption Board. Finally, it is possible to appeal to the President of the United States. The claims must be made in the English language. There are organizations in various places which give advice. Those who desire to make claims to the Exemption Boards, it is advised, should in advance obtain the information from such organizations, from a conscientious Socialist lawyer, or from a Socialist agitator conversant with this matter, or even from the opponents of war.

Those who have families, the fact that they have to support the same is sufficient grounds for exemption. Socialists, even if they should give other grounds for exemption, are always bound to mention that their principles forbid them to go to war or into the Army.

There are some who say they will not go to explain nor will they go into the Army. The government has decided to punish such severely.

20 9. That said Joseph V. Stilson, Joseph Sukys, K. Vidikas and J. V. Stalioraitis, on August 10, 1918, at Philadelphia, in the Eastern District of Pennsylvania aforesaid, did cause to be printed, published and circulated in the issue of the newspaper "Kova" of that date, in the Lithuanian language, among other matters, certain captions and an article, a true and correct copy of which is as follows, to wit:

(Here follows reproduction marked 3, p. 21.)

22 and a true and correct translation of which into English is as follows:

23

Deceiving Those Called to War.

How the Exemption Boards Treat Those Called for Military Service.

One Philadelphia comrade brought to the "Kova" Editorial Office a notice from the Exemption Board to appear for a physical examination on August 13th. The notice was written and mailed August 3rd. It stated: If you desire to submit to the Exemption Board any claims for exemption from military service, such claims must be submitted to the Exemption Board within 7 days from the receipt of this notice.

From August 3rd to the 10th there happens to be 7 days; that is to say, the period for filing claims terminates 3 days before the physical examination takes place. The terms of the Conscription Law provide that it is first necessary to pass a physical examination and then to make claim for exemption.

Since, however, in the mentioned notice to the comrade it was stated that only for a period of seven days after the mailing of such notice could claims for exemption from military service be filed, this comrade hastened and went to his Local Exemption Board and asked for the proper blanks upon which claims for exemption were made.

The Board told him that they "have not" yet any of these blanks; that they are not yet accepting claims for exemption; that they will begin to accept them only on August 9th, that is, only one day prior to that day mentioned in the notice as the last.

That means that the Boards have so fixed up things that those lacking the required cleverness might not have an opportunity to claim exemption; that these, who up to the 7th day after the receipt of notice were unable to file their claims, should not hope any further for exemption.

The Boards know that in the Regulations there is provision allowing 7 days after the physical examination for claiming exemption. However, in their notices they do not mention this; they desire people to misunderstand this so that after the physical examination it will be impossible to file exemption claims.

It is unnecessary to consider such complexities and one should wait for the physical examination. If thereupon a man is considered physically fit for the army, then he will have 7 days time for the purpose of filing the customary claim with the Exemption Board for the purpose of exemption; within 10 days after the presentation of this formal claim it is necessary to set forth on the proper blanks witnessed by a notary the grounds on which you claim exemption.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

24 10. That said Joseph V. Stilson, Joseph Sukys, K. Vidi-
kas and J. V. Stalioraitis, on August 24, 1917, at Philadel-
phia, in the Eastern District of Pennsylvania aforesaid, did cause to
be printed, published and circulated in the issue of the newspaper
"Kova" of that date, in the Lithuanian language, among other mat-
ters, certain correspondence containing an article a true and correct
copy of which is as follows, to wit:

(Here follows reproduction marked 4, p. 25.)

and a true and correct translation of which into English is as follows:

Brockton, Mass.

"New Branch" Agitation.

After the registration here people quieted down and thought that things would simply blow over, but now the conscription "draft" has begun and a new agitation has arisen.

A full sized group has already left the city, a few industrious Socialists likewise have gone, some of them immediately after the registration, others immediately before the "draft"; however, those who remained there and are called for service in the Army are agitating by all kinds of means; some by hastening to lawyers and bringing them money, and others are looking for aid elsewhere.

A few have been examined and found unfit, but a few have been found fit, among whom there is one Socialist, Comrade V. A. Pundis, and from what I heard, it is difficult to get away from. He submitted his claim for exemption but I will announce later to the Kova's readers as to the result thereof. Two Socialists, Comrades St. A. Milcius and P. M. Balsys, absolutely refused to undergo a physical examination and they answered notices with letters of the following nature:

"SIR: I received your letter of June 30, 1917, wherein you urge me to undergo a physical examination, in order to ascertain whether I am fit for the Army.

1. My convictions are against all methods of murder, for that reason I am opposed (on account of conscientious motives) to entering a homicidal war.

2. I came to America with the idea that it is a free country, wherein I could live happily; in reliance thereupon I renounced my allegiance to Nicholas II and his Dynasty and all of his laws, but I did not absolutely renounce allegiance to the new Russian Republic. Therefore I do not see any reason why I must be examined, as I know no power in existence can make a soldier of me.

On account of the foregoing reasons I will not submit to an examination.

(Signed)

STANLEY A. MILCIUS.

"DEAR SIR: Your request commanding me to appear before your doctors for the purpose of ascertaining whether I would be fitted to be a legal homicidal soldier, was received August 9th, and I herein answer the same. This is it:

I refuse to fulfill your demand, i. e., to appear at the fixed place and time for the purpose of ascertaining my health, on account of the following reasons:

1. I have no calling to be a murderer-assassin of any individual, regardless of the country, nation or race to which he belongs.

2. I am deeply convinced that I am needed for the Army of the United States, not for the purpose of defending this country's honor or freedom, for which purpose I would not hesitate to shed blood, and even lay down my life, but for the purpose of accomplishing the object of covetous imperialistic capitalists.

3. Not being a citizen of this country I feel that I have the moral (that means the legal) right to refuse to have you impose upon me a military obligation by force.

On account of the foregoing reasons I refuse to fulfill your demand.

Respectfully,
(Signed)

FR. BALSYS."

29 10. That said Joseph V. Stilson, Joseph Sukys, K. Vidi-
kas and J. V. Stalioraitis, on August 31, 1918, at Philadel-
phia, in the Eastern District of Pennsylvania aforesaid, did cause to
be printed, published and circulated in the issue of the newspaper
"Kova" of that date, in the Lithuanian language, among other mat-
ters, an article signed by N. Januska, a true and correct copy of
which is as follows, to wit:

(Here follows reproduction marked 5, p. 30.)

31 and a true and correct translation of which into English is
as follows:

32 (Deceitful Promises.)

When the sword of war began to knock at the door of the United States, the munition trust rubbed its hands and waited for orders of larger defensive weapons and ammunition. The capitalists' Press, inflamed by "patriotism," published all kinds of enticing reports in order that the war might be more quickly declared, that the golden era might begin.

The Socialists attempted to force the sword of war aside in order that the United States might release the people from injury, bloodshed and death; they pointed out, that such funds are necessary only for the pockets of capitalists, they explained what damage war brings to mankind, they arranged anti-war demonstrations.

But against the Socialists there was a greater effort, the capitalistic government, the dollar, which in modern times overcomes everything and the un-intelligent workingmen. The worshipers of war are thirsty for the dollar; the Democrats, the Republicans and all others saw profit for themselves out of the war, likewise our fellow countrymen. These latter having but small influence among the people but desiring to show that they are at the same time patriots with the munition patriots, that they are business men not workingmen, sent to the President of the United States letters and telegrams of loyalty, that if the President should declare war then they would support him and fight. When the Lithuanian Socialists protested against war, their fellow countrymen protested against the Socialists and even arranged a meeting at South Boston, Mass.

The protests of the Socialists availed nothing. War was declared for the democracy of the munition dealers; soldiers are being sent to France; a compulsory military conscription was established and conscription under the Army already begun.

Among the first called were our fellow countrymen. It was thought that as they were advocates of war that when they were called to fulfill their promises that they would fulfill them, for not only did they promise but also through speeches, lectures and discussions, they explained the benefit of war and maintained that the President having declared war the unfortunate nations would be freed.

Our drafted compatriots likewise claimed exemption from military service, not because of envy but because it was desirable that they be exempted. But let this be a lesson to you—not to force upon others what you, yourself, do not desire. If you do not desire to go to war then why do you tell others to do so; why do you send others into the slaughter-house of war?

If you send others, and do not want to go yourselves, you become traitors. The workingmen having seen your deceit will not place confidence in you, so thus it is with our compatriots. But it is not otherwise with American patriots; and they do not want to go to war to lay down their heads; therefore, they are pushing away as much

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as possible from themselves the aliens into the Army, in order that the aliens may fight for them, the people of other nations not
33 citizens of America. They are making every possible effort that the aliens be taken into the Army and placed in the front in order that the first bullets may pluck their undesirable elements, and among these undesirable elements are our compatriots; therefore it is dangerous to them.

Only the nation of Socialists is growing through all these storms and has for its motto: Workers of the world unite!

(Signed)

N. JANUSKA.

34 11. That said Joseph V. Stilson, Joseph Sukys, K. Vidikas and J. V. Stalioraitis on August 31, 1917 at Philadelphia in the Eastern District of Pennsylvania aforesaid, did cause to be printed, published and circulated in the issue of the newspaper "Kova" of that date, in the Lithuanian language, among other matters, a special article by J. V. Stalioraitis, a true and correct copy of which is as follows, to wit:

(Here follows reproduction marked 6 and 6 cont., pp. 35 and 35^{1/2}.)

36 and a true and correct translation of which into English is as follows:

37 The War and its Causes.

J. V. Stalioraitis.

The fourth year of war has begun. The fourth year of Germany's Austria's Bulgaria's and Turkey's fight for their "democratic rights." The fourth year of England's, France's, Russia's and other allied nations' war for "Democracy." The fourth year in the course of which not only all Europe has been converted into human vegetables, insensible to poverty, suffering and death, raging with unspeakable madness in order that "Democracy" may be established on earth, likewise the hearts of our Americans have been softened and we are entering the conflagration of that fire and blood, in order to put all our efforts in that "Honorable War for Democratization."

Comrade reader! Stop just a moment and consider whether, in fact, it is so that it is our fourth year, as our "good masters" each day explain these matters in schools, from rostrums and pulpits, likewise by the aid of the press. Is it true that all of Europe, and now the United States of America, are fighting for democracy?

Every individual, who thinks with his head and does not merely use his lungs, knows that this is the rawest kind of a lie; that all this talk about democracy is simply smoke blown in the eyes of the workmen, in order that they may be unable to see the truth and not declare war for a real democracy.

Do you believe that Germany is warring in defense of its democracy, when in Germany you could not find even with the aid of a lamp such a thing in daylight? Do you believe that France is fighting for Democracy, when even today France's sword is besmirched with blood of her slaves in Africa? Can you believe in England's war for democracy, knowing that England is killing and forcing into prison hundreds, even thousands of fighters for democracy in Africa, India and Ireland? And perhaps you still believe in the Democracy of Russia under the former Czar and his advisers whose war plans with the allies "for Democracy" even to-day the social patriot-Dictator Kerensky is attempting to accomplish?

And how about the United States? They likewise say that they are warring only for Democracy, but do you believe that? Do you believe in the words of their representatives? Also then when the United States Government represses by prisons and by bullets its citizens asking for more bread for their little children; do you believe in this country's war for Democracy, when right here under your nose the police bludgeons constitute the highest law, when speakers proclaiming real Democracy are forced into prison and newspapers for the very same "offense" are suspended. No! you, if you are not slaves, but men worthy of bearing the name, you can not believe that! You should understand that people, who do not recognize democracy cannot fight for it. Therefore, if this frightful slaughter is being carried on not for Democracy, then what causes evoked it?—the reader will perhaps ask.

In order to explain truthfully one or another of our aspects of life we must explain from a general economic foundation; all other explanations will be more or less misleading. If the economic surroundings of life produce work for mothers and children, the army of the unemployed, suffering and prostitution then there cannot be a doubt that these very same causes produce wars also.

All you who will read this newspaper perhaps already know that the whole world is divided into classes; in other words: In our humanity there is a class of people who throughout their entire existence neither create nor produce anything of benefit to all others, yet who possess all that is beneficial to others, and another class of people who work all their lives and have nothing.

Every living being has a natural instinct,—to live better and not worse; to have more of everything and not less. As the working class wants shorter hours of work, more pay, and better equipped machines and places to work, likewise the class of the idle capitalists want to have more profits.

The Capitalists having in their hands the machinery for manufacturing can very easily carry out their own wishes, for the working man forced by starvation has to go and implore the capitalist to allow him to make use of "his" machinery, without which the workman cannot work.

The capitalist taking advantage of this opportunity, proceeds toward his goal, i. e., making of more and more profit. In order to make more profits he forces his working men to labor long hours for the smallest wage.

The working men receiving small pay, i. e., not receiving full compensation for their work, can not buy all of those products which they create by their work. For if we recall that there is only a small handful of capitalists, and millions of workingmen, then we come to the conclusion, that the purchasers of the manufactured products are the workingmen and no others.

If you should clothe every capitalist with ten suits cover him over with gold chains and insert in him a stomach as large as the biggest bag, even then they could not use all that we have created by our labor. Since the workingmen, the greatest buyers, do not receive such wages as to be able to buy all the manufactured products, then the effect of that is as follows: There accumulates for a certain time so much of unpurchased products, that it becomes necessary to do one of two things: either to shut down the industries, or to find countries where the industry has not yet reached such a high degree of development, a new market for the sale thereof. Since only

39 some one or other of the capitalists of one or another country search for similar foreign markets, then that is only half of the trouble; but to-day not only the capitalists of Europe, but of America and even of Asia are looking for foreign markets.

You perhaps well understand that the meeting of the capitalists of the different countries in one and the same market place produces among them competition and this already leads to war.

The capitalists of the different governments, forced to the wall

by the economic surroundings of life, in order to overcome and force their competitor out of position, compel their governments to accomplish for them this agreeable task by the aid of war. And, the present universal war is nothing more than a war for the markets of the world.

The talk about democracy, about civilization, about the freedom of the smaller nations and international law is nothing more than the blowing of smoke into the workingmen's eyes, in order that they may not see the truth.

In this way there is no more democratization of humanity nor morality than in the war of two dogs fighting for a bone. When two dogs are quarreling, being unable to divide the bone, so likewise England and Germany fight, not being able to divide up the world's markets. All of the other nations partaking in the present war are anticipating the scraps falling from the table of war.

Our United States of America is playing the part of the third dog in this war. When two dogs are fighting, not being able to divide up their bone, then there is an opportunity for the third dog to steal that bone.

So in this war, when England is fighting with Germany, not being able to divide up the world's markets, then the United States capitalists seized all of these markets and now their task is to further weaken their competitors, in order that at some certain time they may assure themselves of the control of those markets. And the longer this war continues, the weaker will become their competitors and the United States conducting the entrance of the capitalists of this country into the flame of war not for the purpose that it may sooner extinguish it, but for the purpose that it may continuously burn little by little.

The capitalists of America desire that this war should last as long as possible and for the reason that they have the greatest profit from this war as well of the requirements of war, as food, clothing, weapons and munitions are prepared and furnished by the American capitalists, and they charge for them prices double and even triple of those of ordinary time. The United States stands on the

allies' and not on Germany's side for the simple reason that
40 American capitalists, being unable from the beginning of the war to loan money to Germany or to both sides, have loaned the allies a lot of money.

If the allies should be defeated, there is no doubt that revolutions would take place in their countries, and that practically means that the loans would be lost.

For this reason the American government, which is nothing else than the Wall Street Executive Committee fulfilling the capitalists' decisions, has declared war for the reason that it may continue longer and finally overthrow Germany. If it happens that these plans of the capitalists will be established, then by one charge several rabbits will be shot.

As you see, then, we American citizens are forced to go and fight that our capitalists may have more profit. We have to fight, in order that capitalist- may be able to transport to Europe food pro-

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ducts prepared by us, and we are to have the opportunity to starve.

Is that just? If it is so, and some of you say that to fight and be killed for the capitalists' interest is right, then go and fight.

But we who do not agree to fight for the purpose of having an opportunity to starve must explain how we would stop that slaughter, much more so how the sword of war is to be utterly eliminated from this earth. The people who have more audacity than reason or shame still say that by means of war we can avoid international laws or permanent disarmament. These are quite as absurd, just as superficial treatment of an injury which leaves an internal infection.

We say if you desire that people should not be ill remove the diseases that produce the causes. If you desire that war should be banished remove the causes which produce war. As you saw in the beginning of this article the fundamental cause of all wars is the fact that the entire world is divided into classes with separate economic interests. In order to destroy war producing causes it is necessary to destroy classes throughout the world and for the purpose of reaching that, there is only one means, that is the taking of nature's wealth and means of work and travel from the private control of the capitalists, into the hands of the people.

But the mentioned control by the people will be called Socialism. Do you fear it?

41 12. That said Joseph V. Stilson, Joseph Sukys, K. Vidikas and J. V. Stalioraitis on September 7, 1917 at Philadelphia in the Eastern District of Pennsylvania aforesaid, did cause to be printed, published and circulated in the issue of the newspaper "Kova" of that date, in the Lithuanian language, among other matters, a news article, a true and correct copy of which is as follows, to wit:

(Here follows reproduction marked 7, p. 42.)

43 and a true and correct translation of which into English is as follows:

44 Patriots' Military Parade.

The dollar patriots last Saturday afternoon arranged a large farewell parade for the drafted soldiers going to Europe. The parade, however, was far from being as large as the Municipal authorities desired to make it. The capitalistic newspaper announced it several weeks in advance; policemen visited the various residences and by either good or bad means tried to obtain the largest possible number of people to participate in this demonstration. Now their newspapers "are bluffing" that there was a crowd of 500,000 spectators on the streets along which the parade marched. In fact only around City Hall and Market and Broad Streets were there large crowds of skylarkers. Furthermore, on Saturday afternoons, outside of this fact, it is customary for large crowds to be in these places. Impartially speaking, in a large number of places so to speak the parade was not even noticed.

Three mothers fainted as they looked upon their sons being drawn by military force into the jaws of war; they were conveyed to hospitals. Indeed as to the weeping of women whose husbands were forced to go as cannon fodder, not a single bourgeoisie newspaper mentioned a thing.

But it is impossible to mention this incident: The demonstration having departed from the center of the city, thousands of people left City Hall for Socialist Headquarters. Some thought that there would be made a public demonstration. It happened however altogether otherwise. The crowd having assembled the Socialist speakers began to speak from the steps of the headquarters and their words found most fitting approval by the crowds. At the same time the venders of Socialist literature were not asleep. It is said that it is a long time since they sold so much literature as they did this time. They sold all that they had of the "People's Press," the local Socialist organ; Socialist brochures and journals were grabbed up by the crowd like fresh hot cakes. Of course, the policemen were occupied in preserving order for the purpose of a demonstration and for this reason they did not stick their beaks here.

The parade started at two o'clock in the afternoon. An electric wire from the Liberty Bell was extended from Independence Hall to City Hall where it was attached to a real bomb. The bell having been struck with a mallet the bomb exploded and that was a signal for the demonstration to start.

45 13. That said Joseph V. Stilson, Joseph Sukys, K. Vidikas and J. V. Stalioraitis on October 5, 1917 at Philadelphia in the Eastern District of Pennsylvania aforesaid, did cause to be printed, published and circulated in the issue of the newspaper "Kova" of that date, in the Lithuanian language, among other matters, Certain captions and an article, a true and correct copy of which is as follows, to wit:

(Here follows reproduction marked 8, p. 46.)

47-8 and a true and correct translation of which into English is as follows:

49 An Interesting Letter from an American Soldier.

A former member who has served his term of enlistment in the American Army, has written a letter to Comrade J. Baltrusaitis (at Pittsburgh), which letter Comrade J. Baltrusaitis has sent to us and an excerpt of which we publish herein.

The mood of the soldiers has no definite tone. Americans "of better blood" who are training to become officers "U. S. Training Camp"—Appear to be more militaristic for they understand the word "patriotism" as ardent Catholics understand the word "God." There are to a certain extent reasons which inflame in them the patriotic mood. The mayors of cities, the Governors of States, and other "noble citizens" of America frequently give forth patriotic, sweet-tongued oratory. They praise their deeds, exalt their service and promise to write their names into the history of the United States if they heroically die in war for their country, for her freedom!

Soldiers of my rank, who entered the war, impelled by hunger or forced to by the Government, encounter altogether different conditions. The brutality of the superiors forced us to become "patriots" and that brutality tames one to obedience, humiliation and fulfillment of the commands of the superiors. For that reason a large number become half-witted, hopeless, indifferent, disregarding their fate and everything else. They do not worry about the present and what kind of a morrow awaits them does not concern them, and they refuse to discuss it!

I think it will be interesting for you to know how shamelessly and immorally the recruiting authorities of the Army conduct themselves at the recruiting station in the city of Chicago. When the government had announced registration day, June the 5th of this year, a large number of Italians, Greeks, Serbians, and young men of other nationalities went "to register." Those foreigners did not understand for they did not know what was the true meaning of registration. Thus they were registered but they were forbidden to return home; all of them numbering about 200, were transported to Jefferson Barracks, Missouri, and thence transported to the Army posts. Then these "Hunkies" and "Dagoes" understand that they deceived them, but it was too late to seek assistance. At their complaints the Army officers laughed saying: "Eh, crazy Wopps, we can't help it; it's too late now." Wonderful system!

At another time I will note something new. I request you to write. Your letter cannot cause me any trouble, for if the Government should find anything illegal in the fact that we have corresponded, it could do no more to me than to throw me into prison or kill me, but since I am not doing anything against the Government either secretly or openly, I therefore have no reason to fear to correspond with whom I desire.

Yours,

— — —."

50 14. That said Joseph V. Stilson, Joseph Sukys, K. Vidikas and J. V. Stalioraitis, on October 19, 1917, at Philadelphia in the Eastern District of Pennsylvania aforesaid, did cause to be printed, published and circulated in the issue of the newspaper "Kova" of that date, in the Lithuanian language, among other matters a certain editorial, a true and correct copy of which is as follows, to wit:

(Here follows reproduction marked 9, p. 51.)

52 and a true and correct translation of which into English is as follows:

53 "Kova" and Censorship.

Postmaster General Burleson says that the Government will not destroy all Socialist newspapers; only those will be destroyed that point out that American Capitalists have drawn this country into war; those who write that the American Government is doing as the Wall Street financiers dictate to her; those who shall criticize (the imperialistic) policies of America and her allies; who interfere with the compulsory military conscription or who put obstacles in the way of the purchase of "Liberty Loan Bonds." Therefore, the Socialist newspapers are threatened with persecution and being compelled to close up until the end of the war simply for those things which each and every Socialist newspaper should explain. This war is imperialistic. Only by explaining imperialism is it possible to truthfully explain the present day capitalism; without imperialism it is utterly impossible to describe the present day extent of capitalism. Not to explain these things in that light would mean the leaving of the workingmen's mind open for filling with poisons of the Capitalistic Press; it would mean permitting the greatest imperialistic deception and error to pass unheeded, namely that this war is being carried on by "democracy" and the "defense" of the smaller nations.

If any Socialist newspaper should heed such regulations of the Postmaster General, then it could not rightly explain the most important thing of this moment—the meaning of Russian revolution—its consequences and extent: It would be impossible to materially or morally support this agitation.

It therefore is plain that the Socialist newspaper which would so degrade itself would be worthless and would become ordinary, suitable filth for the government. The intelligent workingmen would doom it as a traitor of its revolutionary honor. The editorial office of the Society's organs for that reason will not heed these governmental restrictions, and will openly explain to the people as to the imperialistic robbers and their agents—the Government—policies and their plans in this war. If the Government should place its heavy hand upon the L. S. S.'s organs, if they should close them up, then we will know that we have done our duty and did not sell our revolutionary honor in vain and that we did not lower our red banner before the government's threats. If they close our organs the members and other intelligent workingmen will look for other mediums of agitation.

The war will not last forever. After the war our organs will again be able to rise up with honor.

(37 C. C., in Connection With Sec. 5 of Act of May, 1917.)

And The Grand Inquest aforesaid, inquiring as follows upon their oaths and affirmations, do further present that throughout the period of time from May 18, 1917, to the date of the finding and presentation of this indictment, the United States has been at war with the Imperial German Government:

And that continuously throughout said period of time, the said defendants named in the first count of this indictment at said city of Philadelphia in the Eastern District of Pennsylvania, then being members of the organization described in said first count and called Lithuanian Socialist Federation, unlawfully and feloniously have conspired, combined, confederated and agreed together, and with one Paul Sandargos, and diverse other persons to this Grand Inquest unknown:

To commit divers offenses against the United States, that is to say, each offense to consist in unlawfully and feloniously aiding, abetting, counselling, commanding, inducing and procuring one of the members of said organization called Lithuanian Socialist Federation who should become subject to the military law of the United States under and through the enforcement of the provisions of the Act of Congress of May 18, 1917, entitled "An Act to authorize the President to increase temporarily the military establishment of the United States," and of the Proclamations, Rules and Regulations of the President of the United States, made in pursuance of said Act of Congress, and whose names are also unknown to this grand inquest, unlawfully and feloniously to desert the service of the United States in time of war, said defendants not then being themselves subject to the military law of the United States.

55 And the Grand Inquest aforesaid further present that, in order to effect the objects of the said conspiracy, the said defendants, at the several times and places in that behalf hereinafter mentioned in connection with their names, have done certain acts, that is to say.

Overt Acts.

1. The said Joseph V. Stilson, Joseph Sukys, K. Vidikas and J. V. Stalioratis on June 1, 1917, at Philadelphia in the Eastern District of Pennsylvania aforesaid did cause to be printed, published and circulated in the issue of the newspaper "Kova" of that date, in the Lithuanian language, among other matters, a certain editorial, a true and correct copy of which is as follows, to wit:

58 and a true and correct translation of which into English is
as follows:

59

Editorial.

(Concerning the Military Registration of June 5th.)

On June 5th, throughout the entire country, there will be a Military registration of all men between the ages of 21 years and 30. Upon registering, it will be necessary to answer twelve questions in filling out the proper blanks. Some of the questions are understood to be unimportant to all as well as to us Socialists. We, however, call your attention to this twelfth question: "What grounds—reasons, have you for claiming exemption from military service?" It is known that there will be a lot of Socialists who will not register nor answer any of the question-, despite the fact that the Government has decided to punish by one year's imprisonment those who fail to register. In Cleveland and Kings County, New York, Socialist locals have refused to register; the Pittsburgh Socialists likewise have refused to give their age. The Socialist locals in many towns are calling meetings for the purpose of discussing the registration. However, those who have not sufficient courage and who will register, in answering the twelfth question, will state that their principals as International Socialists, forbid them to go to war.

Registration is not equivalent to the sanctity of an oath.

60 2. That said Joseph V. Stilson, Joseph Sukys, K. Vidikas and J. V. Stalioraitis, on June 15, 1917, at Philadelphia in the Eastern District of Pennsylvania aforesaid, did cause to be printed, published and circulated in the issue of the newspaper "Kova" of that date, in the Lithuanian language, among other matters certain captions, news items and despatches, a true and correct copy of which is as follows, to wit:

(Here follows reproduction marked 11, p. 61.)

62 and a true and correct translation of which into English is as follows:

63 Capturing Slackers.

The Persecution of Opponents of Militarism.

Slackers Being Captured.

United States Government agents, from June 11 to the 12, began vigorously to catch "Slackers," i. e., those who were required to register on June 5th for the purpose of compulsory draft, but who heretofore had not registered.

There are more than a million "Slackers" in America.

Socialist Party's Secretary Arrested.

St. Louis, June 11. Comrade A. Germer and 11 other individuals are dragged into court as conspirators against the compulsory conscription law. For several days prior to Registration Day they actively participated in the calling of a mass meeting. All have been released upon furnishing \$1000 bail. Germer is the Socialist Party's General Secretary.

The Persecution of Opponents of Militarism in New York.

For failure to register and for agitating that others should not register L. Kramer, M. Becker, J. Walker and L. Sternbery, were arrested. The Jury which will try them consists of business men.

39 Arrested.

New York, June 11, 39 persons were arrested at the Harlem Mass meeting which was organized for the purpose of fighting against compulsory service in the Army. The persons arrested had no registration cards.

The United States Marshall, McCarthy, said that he would not permit any more such meetings.

64 55 "Conspirators" Arrested in Texas.

Dallas, Tex.—Government agents arrested 55 persons; they are mostly members of the "Farmers' and Workingmen's Protective Association." Some are charged with having organized to oppose with armed force compulsory military service; others with conspiring to destroy railroad bridges, tracks, etc.

D. Indriunas is Arrested.

Lockport, Ill.—Comrade St. Indriunas, a coworker of the "Kova," was arrested for distributing anti-military literature.

65 And do further present that, in order to effect the objects of said conspiracy, the said defendants, at the several times and places in that behalf mentioned in connection with their names under the heading "Overt Acts" in the first count of this indictment, have done certain acts, that is to say, the several acts mentioned in said first count under said heading:

Contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

FRANCIS FISHER KANE,
United States Attorney.

Philadelphia, Pa., September 10, 1918.

66 And now, this first day of October, A. D. 1918, the Defendants Joseph V. Stilson and Joseph Sukys being arraigned say they are Not guilty in manner and form as they stand indicted, and of this, etc.

The Attorney of the United States replies Similiter and issue.
Therefore, etc.

67 In the United States District Court for the Eastern District of Pennsylvania, of June Sessions, 1918.

No. 114.

UNITED STATES

v.

JOSEPH V. STILSON, JOSEPH SUKYS, K. VIDIKAS, and J. V. STALIORAITIS.

Penal Code: Violation of Espionage Act.

Charge: Conspiracy.

Bill of Exceptions.

Be it remembered, That in the said term of June Sessions, 1918, came the said Plaintiff into the said Court, and impleaded the said Defendants in a certain plea of Conspiracy to violate Espionage Act &c., in which the said Plaintiff declared (prout narr.) and the said defendants pleaded (prout pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said Court, held at the County aforesaid before the Honorable Oliver B. Dickinson, Judge of the said Court, the first day of October, 1918, the aforesaid issue between the said parties came to be tried by a jury of the said County for that purpose duly impanelled (prout list of Jurors), at which day came as well the said Plaintiff as the said Defendants by their respective Attorneys; and the Jurors of the Jury aforesaid impanelled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn or affirmed, to try the said issue; and upon the trial the counsel of the said defendants noted the following exceptions.

68 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1918.

No. 114.

THE UNITED STATES OF AMERICA

VS.

JOSEPH V. STILSON and JOSEPH SUKYS.

Charge: Conspiracy to Violate Espionage and Selective Service Acts.

Philadelphia, Pa.,

Tuesday, October 1, 1918.

Before Hon. Oliver B. Dickinson, J.

Present: Samuel Rosenbaum, Esq., Special Assistant United States District Attorney; Owen J. Roberts, Esq., Special Assistant United States District Attorney, representing the United States; Henry Johns Gibbons, Esq., and Henry John Nelson, Esq., representing the defendants.

Selection of the Jury.

No. 82. FREDERICK SCHATZ, sworn on his voir dire.

By Mr. Roberts:

Q. You are on the list as a dealer. A dealer in what?

69 A. Candy, stationery and cigar store.

Q. What is your age?

A. Thirty years old.

Q. The case you are about to be called on to try is the case of United States against Joseph Stilson and Joseph Sukys, who are said to be of Lithuanian extraction or sympathies, and who are charged with a violation of the so-called espionage act of the United States, which forbids the making or publication of reports, or the making

of statements or the doing of things to obstruct the draft, and the recruiting and enlistment service. Have you ever heard of that case?

A. Well, the newspaper case, I read a little about it in the paper.

Q. Did you form any opinion as to the innocence or guilt of these men?

A. Not these men, no sir. That other case——

Q. You refer to the Tageblatt case?

A. Yes sir, the Tageblatt, that is the case, but nothing about this here.

Q. You know nothing about these men?

A. No sir, nothing.

Q. Is there anything in your mind or in your conscience or in your belief that would prevent your giving these defendants a perfectly fair trial on the law and the evidence as you get it in this case?

A. No sir.

Q. You could give them a good, fair, honest trial?

70 A. Yes sir.

Q. Without any prejudice against them, because they may happen to be of foreign extraction, and without any prejudice against the United States because we are prosecuting them in war time?

A. Yes.

Q. You would be perfectly fair and impartial?

A. Yes sir.

Cross-examination.

By Mr. Nelson:

Q. If you were told that these defendants, or if you found out after the trial proceeded, that these defendants were Socialists, would that affect your judgment so that you could not render an impartial verdict as the law was laid down to you by the Judge?

A. No sir, it would not.

Q. Do you know that there is such a party as a Socialist Party in this country?

A. Yes sir.

Q. Why did you, when you were asked by Mr. Roberts whether or not you had read anything about these men in the newspapers, say "Yes," and associated these defendants with the Tageblatt?

A. I had thought, when he said did I read the paper, he meant the Tageblatt case. See? I was a little twisted for the time.

Mr. Nelson: No challenge.

Mr. Roberts: Challenged by the Government.

71 No. 5. WILLIAM H. BETZ, sworn on his voir dire.

By Mr. Roberts:

Q. Have you heard the questions that I put to the gentleman who preceded?

A. No sir, I could not.

Q. This is a prosecution by the United States under the espionage act, so-called, which forbids any act that is intended to interfere with or hinder the recruiting and enlistment service, or aid the enemies of the United States, either by spoken word or act, and these defendants are indicted for conspiracy to violate the act. They are said to be members of a Lithuanian Socialist Organization. Do you feel, if you were sworn as a juror here, that you could give them a perfectly fair trial as an American citizen?

A. Positively.

Q. And decide the case only on the law and the evidence as you get it in this case?

A. Yes sir.

Q. Do you know anything about this particular prosecution? Have you ever heard of it?

A. Positively no.

Q. You have formed no opinion of any kind?

A. No sir.

Cross-examination.

By Mr. Nelson:

Q. Did you ever read anything about it in the newspapers?

A. No sir.

72 Q. And you have no prejudice against Socialists, such as would interfere with your giving a just and fair verdict in this case?

A. No, I have not.

Q. What is your business?

A. By profession I am a druggist.

Q. You are a druggist?

A. And my particular business is demonstrating the use of intravenous products to the medical profession.

Q. Do you work for somebody else, or are you in business for yourself?

A. I have charge of the Eastern branch. The home office is located in Denver.

Q. What is the name of the concern?

A. Intravenous Products Company.

Mr. Roberts: No challenge by the Government.

Mr. Nelson: No challenge by the defendants.

(There being no challenge, the juror was seated in the box as Juror No. 1.)

No. 76. HENRY L. ROMICH, sworn on his voir dire.

By Mr. Roberts:

Q. This is a prosecution for conspiracy against these two defendants for violation of the so-called espionage law of the United States, which forbids interference with the draft or any attempt to interfere

with the recruiting and enlistment service of the United States.
73 Have you ever heard of that case against Stilson and Sukys?

A. I have not.

Q. You have formed no opinion about it then?

A. No sir.

Q. Do you feel, if you were sworn as a juror in this case, that you would be able to give these defendants a fair trial, and decide the case according to the law and the evidence, and that only?

A. Sure.

Q. It is said that some of them are Socialists, and they have some Lithuanian affiliations. Would that affect you either for or against them?

A. No.

Q. In other words, though they be Socialists, if you found them guilty, you would not excuse them because they are Socialists?

A. No.

Q. And if you found them innocent, you would not convict them because they were Socialists?

A. Right.

Cross-examination.

By Mr. Nelson:

Q. What business were you in before you retired?

A. I was in the dairy business. I am a farmer. I used to be a farmer. A dairy.

Mr. Nelson: No challenge by the defendants.

Mr. Roberts: No challenge by the Government.

74 (There being no challenge, the juror was seated in the box as Juror No. 2.)

No. 55. JACOB H. LAMOR, sworn on his voir dire.

By Mr. Roberts:

Q. This is a prosecution under the espionage act of the United States against these men for a conspiracy to violate the act, and to say things which were calculated to hinder the United States in raising its army, to hinder the recruiting and enlistment service of the United States, and to aid the enemies of the United States. These men are said to be members of a Socialist organization, and to have Lithuanian blood or to be of Lithuanian descent. Have you ever heard of the case?

A. I have not.

Q. If you were sworn as a juror in this case do you feel, as a good American, you could try the case solely on the evidence and the facts and the law as produced in this case?

A. I do.

Q. Would the fact that these men are Lithuanians, if they are such, or Socialists, cause you to acquit them if you thought them

guilty, or cause you to convict them if you thought them innocent, on the evidence?

A. No sir.

Cross-examination.

By Mr. Nelson:

Q. Whom do you work for?

A. Kirk, Foster and Company.

75 Q. What business are they in?

A. Wholesale grocers.

Q. And you have no prejudice against Socialists as such, so that it would interfere with your judgment in rendering a verdict, according to the law and the evidence?

A. I have not.

Q. When I asked you if you had any prejudice against Socialists, what did you take my question to mean?

A. I take it to mean that if I am prejudiced against Socialism in general.

Q. Yes, but what do you understand when I ask you about Socialism?

A. Why, when you ask about Socialism I take it that——

Q. What is Socialism, according to your opinion?

A. Well, a person whose mind is biased along certain lines.

Q. And along what lines, for instance?

A. Well, for instance, they have an idea—a person who has the idea that they have certain rights and certain things that belong to them. They feel they should have them whether they are justified in having them or not.

Mr. Nelson: The juror is challenged by the defendants for cause.
Mr. Roberts: I object to the challenge for cause.

Mr. Nelson: The answer of the witness, your Honor, shows that in his opinion Socialists are people who do things which are not justifiable.

Mr. Roberts: That was not what he said.

76 M. Nelson: He shows by his answer that they are biased in certain things, and when I asked him further he said——

The Court: I think we understand the witness. We are all biased in favor of our own predilections, no matter what our political convictions are.

Mr. Roberts: I suppose a Democrat would say a Republican was biased, and a Republican might say a Democrat was biased.

The Court: To be perfectly frank, I think each one of them would own up to being biased.

Mr. Nelson: Further, your Honor, he said Socialists were people who wanted things, whether they were justified in having them or not.

The Court: That does not mean any more than this, I assume, that they think, from their point of view, they are right, and that

they insist upon having what they want, notwithstanding other people do not think as they do.

Mr. Nelson: Further, the witness shows by his answer that he does not know what Socialism is.

Mr. Roberts: If that is to disqualify jurors, if they cannot define Socialism, then it disqualifies everybody in the court room, probably, because I would not want to be stood up and asked to give a correct definition of Socialism.

77 The Court: In point of fact, Mr. Nelson, with any body of men, who entertain a common belief upon any subject, one of the things as to which they always have to contend is the difficulty in getting other people to have the same conception of their aims and motives and purposes and beliefs and doctrines as they have themselves. I do not think there is any occasion to have any discussion about it. The challenge is for cause?

Mr. Nelson: For cause, yes, sir.

The Court: The challenge is denied, and exception allowed to the defendants.

(Exception noted for the defendants, individually and jointly, by direction of the Court.)

Mr. Nelson: Then, sir, I challenge on behalf of the defendant Stilson individually. The juror is satisfactory to the defendant Sukys.

The Court: Upon that I rule that a peremptory challenge may be allowed for the defendants, but it is a challenge on behalf of the defendants as if there was but one party defendant. I will allow the challenge, but accompany it with the ruling, that it is for the benefit of both the defendants, and counts as against both defendants, and, so far as the ruling is a qualification of your right of peremptory challenge, I give you an exception.

(Exception noted for the defendants, individually and jointly, by direction of the Court.)

78 Mr. Nelson: Will your Honor instruct the court stenographer, to save time, that the same ruling may apply in case I should make a similar objection or challenge?

The Court: Yes, if at any time another peremptory challenge should be made upon behalf of either of the defendants, individually, it is understood that it is subject to the same ruling and allowance of the same exception.

No. 53. WILLIAM P. KINSEY, sworn on his voir dire.

By Mr. Roberts:

Q. This is a prosecution under the so-called espionage law of June 1917 which forbids acts and speeches which tend to hinder the Government in raising its army, and which tend to give aid and comfort to its enemy. I am merely giving what I understand to be

the effect of the act, and not words. These gentlemen here, these defendants, are indicted for conspiracy to violate that act. Have you ever heard of the case against them?

A. No, only what I saw in the paper.

Q. Have you formed any opinion at all about their guilt or innocence?

A. No, sir.

Q. They are said to be of Lithuanian extraction, and are said to be members of some sort of a Socialist organization. Would that fact prejudice your mind, either for or against them, so that you could not try this case and render a verdict according to the law and the evidence?

A. No, sir.

79 Q. In other words, the fact that they were Socialists would not cause you to convict them if they were shown to be innocent, on the evidence, of the charge?

A. No, sir.

Q. And the fact that they were Socialists would not cause you to acquit them if the evidence showed they were guilty?

A. No, sir.

Cross-examined.

By Mr. Nelson:

Q. Did what you saw in the paper cause you to form an opinion with regard to the guilt or innocence of these people?

A. No, sir.

Q. And if you had a doubt in your mind as to whether or not these defendants were guilty, would you incline to find them guilty if they were socialists?

A. No, sir.

Q. If in the development of the trial it should be brought to your attention that these defendants were pacifists, would that cause your mind to become in such a state that if you were in doubt as to whether or not they were guilty, you would incline to find them guilty rather than innocent?

A. No, sir.

Q. What business were you in?

A. Retired.

Q. You are retired now, but what business were you in before you retired?

80 A. Mechanical engineer.

Q. Were you in business for yourself?

A. No, sir.

Q. You worked for someone else?

A. Yes, sir.

Q. Who did you work for?

A. I worked for the East Jersey Water Company of New York.

Q. When you were asked by Mr. Roberts as to whether or not the fact that these defendants might be socialists would affect your judge-

ment in this case, what did you understand him to mean by the word "socialists"?

A. Well, I should say an organization or body of men to protect themselves individually and as a body.

Q. An organization or a body of men?

A. To protect themselves in a manner.

Q. What was the last?

A. In a manner.

Q. How do you understand they organize to protect themselves?

A. Well, as any other body would form themselves to protect their body as an organization.

Q. Do you understand the socialist party to be a political organization?

A. No, sir. I don't know very much about it, as far as that is concerned.

Q. You don't know whether it is a political organization, or not?

A. No, sir.

81 Q. Do you know what the objects of the socialist party are?

A. Not to any great extent, no, sir.

Mr. Roberts: No challenge by the Government.

Mr. Nelson: The juror is challenged by the defendant Zukys individually. This juror is satisfactory to the defendant Stilson.

(Exception noted for the defendants, individually and jointly, by direction of the Court.)

No. 61. HARRY J. MYERS, sworn on his voir dire.

By Mr. Roberts:

Q. You have heard the questions I have asked the previous jurors on the stand?

A. Yes, sir.

Q. Do you know anything about this case, from reading about it, or anything of that sort?

A. I have no recollection. I may have read of it. I have no recollection of it at all.

Q. At all events, you have formed no opinion at all as to the guilt or innocence of these defendants?

A. No, sir.

Q. You feel yourself perfectly competent to give them a fair trial, whether they be natives or foreigners or whatever their political creed may be?

A. I do.

82 Q. The fact that they are socialists would not bias you against them, so that you would render a verdict of guilty, if the evidence did not show they were guilty?

A. No, sir.

Q. The fact that they were socialists would not lead you to give them any consideration other than a consideration of the law and the evidence, if the evidence proved them guilty?

A. No, sir.

Q. You would find according to the evidence?

A. Yes, sir.

Q. What is your business?

A. I am president of a lumber company at Bethlehem, Pennsylvania.

Cross-examined.

By Mr. Nelson:

Q. What is your business?

A. President of a lumber company in Bethlehem, Pennsylvania.

Q. You are president of a lumber company?

A. Yes, sir.

Q. And if these defendants should turn out to be pacifists would that bias your judgment so that if you were in doubt, after you were sworn as a juror, as to whether they were guilty or not, would that prejudice your mind so that if you were in doubt you would be inclined to find them guilty, as a patriotic American?

A. By "pacifist" do you mean a pacifist within the law or a pacifist who had violated the law?

Q. No, I mean simply a man who is opposed to war. I mean simply one who is opposed to war in general.

83 A. No. I could give them a just verdict.

Q. What do you understand the socialist party to mean?

A. The socialist party?

Q. Yes.

A. I understand the socialist party to be a regularly organized and established political party of the United States.

Q. Do you know what the objects of the socialist party are?

A. Well, I do not think I have ever been able to determine what their objects were.

Q. Have you any prejudice against socialists as such?

A. No.

Mr. Nelson: Defendants accept the juror.

Mr. Roberts: No challenge by the Government.

(The juror was seated in the box as juror No. 3.)

No. 32. MORRIS GROFF, called but did not answer.

No. 13. WILLIAM H. COSTER, called but did not answer.

No. 38. CHARLES HEIBER, sworn on his voir dire.

By Mr. Roberts:

Q. Have you heard the questions that have been put to the previous jurors that have been called?

A. I did, some of them.

84 Q. You understand that this is a prosecution under the espionage law for publications or words which are supposed

to have interfered with the draft, or had the purpose of interfering with the draft, with the operation of the draft, or the recruiting and enlistment service of the United States. These men are said to be Lithuanians and socialists. Do you feel you could give them a fair trial upon the charges which the Government has made against them?

A. I can, yes.

Q. Would the fact that they are socialists bias you in their favor?

A. No.

Q. Would it bias you against them?

A. No, I do not think so.

Q. You would try this case on the law and the evidence?

A. Yes.

Q. If the evidence shows they are guilty you will say so, whether they are socialists or pacifists or not?

A. Right.

Q. And if the evidence shows they are not guilty, you will say so, whether they are socialists or pacifists or not?

A. That is right.

Cross-examined.

By Mr. Nelson:

Q. What business are you in?

A. I am in no business at all. Retired.

85 Q. What business did you use to be in?

A. Wholesale feed.

Q. What do you understand the socialist party to mean?

A. I never gave it much thought. I never read much of it.

Q. Well, you answered the question that a man who was a member of the socialist party would not prejudice you.

A. Well.

Q. You must have based that answer on something.

A. Sure. I just heard about socialism, but I never gave it any study.

Q. Have you got no idea of what the socialist party stands for?

A. Well, I have got an idea, but I don't have much of an idea. I don't know much about it.

Q. Do you think they are a law abiding organization?

A. I think they are.

Q. Or a very wicked organization?

A. I think they are law abiding.

Q. You think they are law abiding?

A. Yes.

Q. Did you see anything in the newspapers about this case?

A. I think I did read it, but I don't remember anything about it any more.

Q. How long ago did you read about it in the newspapers?

A. Oh, I guess, I should judge about a month or so.

Q. Did you form any opinion at that time with regard to their innocence or guilt?

86 A. No, sir, I did not.

Q. Have you heard anything about their case?

A. No, sir.

Q. Beside what you heard here this morning?

A. No, sir.

Mr. Roberts: No challenge by the Government.

Mr. Nelson: No challenge by the defendants.

(The juror was seated in the box as juror No. 4.)

No. 80. CARL SAYLOR, sworn on his voir dire.

By Mr. Roberts:

Q. You have heard, I presume, the questions that have been put to those who have preceded you here?

A. Yes, sir.

Q. Have you heard anything about this case or read anything about it?

A. No, sir.

Q. You have formed no opinion about the guilt or innocence of these defendants?

A. No, sir.

Q. Do you feel yourself competent, if sworn as a juror in this case, to give these men a fair trial, according to the law and the evidence, and that only?

A. Yes, sir.

Q. The fact that these men are so-called socialists, or that they are Lithuanians, would that bias you in their favor, so that

87 you would give a verdict of not guilty if the evidence proved they were guilty?

A. No.

Q. Would it bias you against them, so that if the evidence showed that they were not guilty, that you would then find them guilty because they were socialists or Lithuanians, or pacifists?

A. No, sir.

Q. You would try this case according to the evidence, and that only?

A. Sure, yes, sir.

Cross-examined.

By Mr. Nelson:

Q. You are a conductor?

A. Yes, sir.

Q. What company do you work for?

A. Philadelphia and Reading Railway.

Q. You are a railroad conductor?

A. Yes, sir.

Q. What country do the Lithuanians come from?

A. It has been a good while since I went to school.

Mr. Roberts: It seems to me that is hardly a fair question to ask. I question whether anybody in the court room would know just how to answer it.

The Witness: But they are from the Central Powers anyhow.

88 By Mr. Nelson:

Q. Pardon me? What was your answer?

A. Well, from Central Europe.

Q. In other words, you think Lithuanians are alien enemies?

A. They are alien enemies?

Q. Yes, do you think that Lithuanians are alien enemies?

A. Yes, I do.

Mr. Nelson: No challenge by the defendants.

Mr. Roberts: No challenge by the Government.

(The juror was seated in the box as juror No. 5.)

No. 69. DAVID POLLOCK, sworn on his voir dire.

By Mr. Roberts:

Q. You are retired, I take it?

A. Yes, sir.

Q. What business were you in?

A. Real estate business.

Q. Have you heard the questions I put to the other gentlemen?

A. Most of them, yes, sir.

Q. Have you any knowledge of this case from reading about it or hearing about it?

A. No, sir.

Q. Then, of course, you have formed no opinion whatever about the guilt or innocence of these defendants?

A. No, sir.

Q. This is a prosecution under the espionage law for interfering with the United States draft or attempting to interfere with it. Do you feel, in spite of the fact that these men are Lithuanians, if they are such, and are socialists, if they are such, and are pacifists, if they are such, that you could not try this case on the evidence and the law, and that only?

A. I can.

Q. And render a verdict on the law and the evidence?

A. Yes, sir.

Q. In other words, you would not find a man that had not been proved guilty, to be guilty, just because he was a pacifist, would you?

A. No.

Q. And if the evidence proved the defendants to be guilty, you would not render a verdict of not guilty, because they were pacifists, would you?

A. No, sir.

Q. If the evidence proved them not guilty, you would not convict them because they were socialists, would you?

A. No, sir, hardly.

Q. You would try this case according to the law and the evidence?

A. Yes.

Q. You would lay aside any bias or prejudice you might have against any man's beliefs if he came before you as a defendant?

A. Yes, sir.

Cross-examined.

90

By Mr. Nelson:

Q. When Mr. Roberts asked you if you had any prejudice against pacifists, what did you understand him to mean by "pacifist"?

A. "Pacifist"?

Q. Yes.

A. A pacifist is anybody who wants the war to stop, does not want it to go on, does not want it to proceed,—any means at all to have peace, he does not care how it turns out.

Q. Do you consider that pacifists are law abiding or the contrary, that they are not law abiding?

A. The majority of them, I think, are law abiding, as far as I know of them.

Q. The majority of them are law abiding?

A. Yes, sir.

Q. There are both kinds among pacifists. What do you understand by "socialist"?

A. Well, a socialist—it is hard to tell. There are some of them who are a right nice class of people, and some are not. I know several of them. They don't make any bones about saying they are socialists. They probably are all right personally, but some of their things I don't coincide with.

Q. What are some of their principles?

A. Well, that is hard to tell. I could not name any special ones at all, but I know some of the things don't suit, according

91

to my theories.

Q. Not according to your theories?

A. No. Some of them I don't like.

Q. But you have no prejudice against them of any kind?

A. No, sir.

Q. Do you understand that a Lithuanian comes from one of the Central powers or comes from one of our allied countries?

A. What is that?

Q. Do you understand that a Lithuanian comes from one of our enemy countries or from one of our allied countries?

A. They came from a portion of Russia at one time.

Q. That is, some of them are among the Central Powers?

A. They are on the other side. Most of them are all very good. I understand they come from the other side, Russia.

Q. What business were you in before you retired?

A. Real estate business. After that in the wholesale liquor business. I did not stay in that very long.

Mr. Roberts: I have no challenge.

Mr. Nelson: No challenge by the defendants.

(There being no challenge, the juror was seated in the box as Juror No. 6.)

No. 8. EDWIN BREADY, sworn on his voir dire.

By Mr. Roberts:

Q. Where are you employed?

A. Pennsylvania Railroad Company.

92 Q. In the capacity of bookkeeper?

A. Clerk. Accounting clerk.

Q. You have heard the questions I have put to some of these other gentlemen, have you?

A. Yes, sir.

Q. Do you know anything about this case by reason of reading it or hearing of it?

A. I never heard of it.

Q. You have formed an opinion, then, as to the guilt or innocence of these men?

A. No, sir.

Q. Do you feel yourself competent to give them a fair trial according to the law and the evidence as you receive it in this case?

A. I do.

Q. Would the fact that they are socialists so prejudice you in their favor, that if the evidence shows beyond reasonable doubt that they were guilty, you would not say by your verdict that they were not guilty?

A. No.

Q. Would the fact that they were socialists prejudice you against them in such a way that if the evidence did not make out their guilt, you would convict them anyhow?

A. No, sir. I would abide by the evidence only.

Cross-examined.

93 By Mr. Nelson:

Q. Suppose after you had heard the evidence that there was a reasonable doubt in your mind that as to whether or not they were guilty, would you decide against them if they were socialists?

A. If there was a reasonable doubt in my mind?

Q. Yes, as to whether they were guilty or not, would the fact that they were socialists cause you to decide against them?

A. I would never convict where there was a doubt.

By Mr. Roberts:

Q. You would never convict where there was reasonable doubt?

A. No, sir.

By Mr. Nelson:

Q. We will put it in another way. Suppose it was six of one and half a dozen of the other, and you did not know whether they were guilty or not, but is the state of your mind *was* such that you would feel called upon, as a patriotic duty, to decide against them for fear some traitor might get away.

A. No, I would have to decide according to the evidence. That is what I would be sworn to go by, the evidence.

Q. What is your idea as to what the socialist party is?

A. Well, my idea of the socialist party is that they are an organization which believes in public ownership of utilities of all kinds, both state and national, city and so on, and they believe in sort of a co-operative plan in business, and so on.

Q. Do you know the socialist party to be, or don't you know it to be a regularly organized legal political organization?

A. Only by what I read in the papers about their candidates and so on.

Q. You do know that they put up candidates who are voted for at our public elections?

A. Yes, sir.

Mr. Roberts: I have no challenge.

Mr. Nelson: No challenge.

(There being no challenge the juror was seated in the box as juror No. 7.)

No. 44. JAMES B. JACOBY, sworn on his voir dire.

By Mr. Roberts:

Q. Have you heard what I have asked the other gentlemen preceding you on the witness stand?

A. Yes, sir.

Q. Do you know anything about this case?

A. No, sir.

Q. You have formed no opinion about it?

A. No, sir.

Q. Do you feel competent to give these defendants a fair trial according to the law and the evidence, and that only?

A. I do.

Q. The fact that they are socialists or pacifists would not excite them in your mind if the evidence shows they were guilty? You would bring in a verdict according to the evidence. Is that right?

A. Yes, sir.

95 Q. And the fact that they were pacifists or socialists would not prejudice your mind against them so that if the evidence did not show they were guilty, you would convict them on general principles anyhow?

A. No, sir.

Cross-examined.

By Mr. Nelson:

Q. Haven't you a prejudice against socialists, so that if you were in doubt, and you were on that jury, and you were in doubt, don't you think that prejudice would sway your judgement so that you would decide against these defendants?

A. I don't think it would.

Q. You don't think it would?

A. I don't think it would.

Q. You feel quite sure that you have no prejudice against socialists so that it would sway your judgement?

A. No, not to that extent.

Q. Not to that extent?

A. No, sir.

Q. To what extent have you a prejudice against them?

A. Well, not to the extent that I would not give a fair verdict in the case in their favor.

Q. You would give a fair verdict?

A. Yes, sir.

96 Q. Suppose you were in doubt, and it was equally certain in your mind that they were guilty and they were not guilty, according to the evidence, would you, as an American citizen, taking into consideration that you had a certain amount of prejudice against the socialists, would that cause you to decide that they were guilty from fear, if you did not do so, some traitor might escape?

A. I don't think it would.

Q. You don't think it would?

A. No, sir.

Q. What business were you in before you retired?

A. Plumbing.

Q. In the plumbing business?

A. Plumbing.

Q. Did you work for yourself, or someone else?

A. I had somebody to work.

Q. You worked for someone else?

A. No, somebody else worked for me. I engaged men.

Q. You had a business of your own?

A. Yes, sir.

Q. You are a married man?

A. Yes, sir.

Q. Have you a family?

A. Yes, a wife. No family.

Mr. Roberts: No challenge.

Mr. Nelson: No challenge.

(There being no challenge the juror was seated in the box as juror No. 8.)

97 No. 73. JAMES R. REYNOLDS, sworn on his voir dire.

By Mr. Roberts:

Q. You have heard the questions that have been put to some of the gentlemen preceding you on the witness stand?

A. I did not hear them.

Q. You did not hear them?

A. No, sir.

Q. This is a prosecution under the espionage act, so-called, for the interference of the recruiting and enlistment service of the United States, and under the draft act, by attempted interference with the operation of the draft. These defendants, Sukys and Stilson, are said to be Lithuanians and socialists, or of Lithuanian extraction. Do you feel that you could give them a fair trial and render a verdict in accordance with the law and the evidence, and only that?

A. Yes, sir.

Q. The fact that they are socialists or pacifists or Lithuanians would not weigh with you as against the evidence?

A. No.

Q. And if you found them guilty, those facts would not lead you to acquit them?

A. No, sir.

Q. And if you found them innocent, you would not find them guilty on general principles?

A. No, sir.

Cross-examined.

98 By Mr. Nelson:

Q. What business are you in? Paper hanging?

A. Yes.

Q. You are in the paper hanging business?

A. And real estate.

Q. Working for yourself, or someone else?

A. Real estate and paper hanging.

Q. You are a real estate man?

A. Real estate and paper hanging.

Q. Then you are in business for yourself?

A. Yes, sir.

Q. What do you understand by the word "socialism"? What do you understand by the word "socialism"? What is a socialist?

A. Well, they have political views of their own.

Q. We all have views of our own, I know.

Mr. Roberts: Political views, he said.

Mr. Nelson: Political views.

By Mr. Nelson:

Q. What are their political views? Do you know? Do you know what their political views are?

A. No, not exactly?

Q. In a general way?

A. They have ideas of their own, I suppose. I never followed them up much.

Mr. Nelson: The juror is challenged on behalf of both of the defendants.

99 No. 14. FRANK DELONG, called but did not answer.

No. 77. PETER C. ROMIG, called but did not answer.

No. 71. J. E. RAMSEY, sworn on his voir dire.

By Mr. Roberts:

Q. Have you heard the questions I put to the other jurors who were called?

A. I heard some of them, yes, sir.

Q. Have you heard or read anything about this prosecution against Stilson and Sukys for conspiracy to violate the espionage act and to violate the draft act?

A. I have not.

Q. You have heard nothing about it?

A. No.

Q. Then, I take it, you have formed no opinion at all as to their guilt or innocence?

A. No, sir.

Q. If you were told that they were Lithuanians and socialists and pacifists, do you think that would have any effect on your ability to try this case on the law as the court gives it to you and the evidence as it comes out of the witnesses' mouths?

A. It would not.

Q. It would not?

A. No, sir.

100 Q. Would you be influenced to render a verdict of "not guilty," if the proof showed, in your mind, they were guilty, merely because they were pacifists? Suppose you were told they were pacifists, and you found that they had violated the act, would you say "well, I will let them go, because they are pacifists"?

A. I would not.

Q. You would not?

A. No, sir.

Q. And if you found that they were pacifists, and that they were not guilty, and you thought the evidence did not show they were

guilty, would you convict them, because they were pacifists or socialists?

A. No, sir.

Q. You would not?

A. No, sir.

Q. You would try this case according to your oath on the law and the facts?

A. Yes, sir.

Cross-examined.

By Mr. Nelson:

Q. What do you understand a Lithuanian to be? An alien enemy or an ally?

A. An alien enemy.

Q. Then, you think a Lithuanian comes from one of the Central Powers of Europe?

A. Well, I don't know whether they do or not. I don't
101 know.

Q. You are not quite sure about it?

A. No. I don't know anything about it, in fact.

Q. What do you understand a socialist to be?

A. I never gave it much thought, about socialists. We don't have them in our neighborhood.

Q. You don't have socialists in your part of the country?

A. No, sir, we don't have socialists in our neighborhood.

Q. You don't have socialists in your neighborhood?

A. No, sir.

Q. Have you any prejudice against socialists as such?

A. I have not.

Q. That is, in your opinion, you think the socialist party is a law abiding legitimate legal political organization?

A. I don't know anything about it. Yes, sir.

Q. Do you know that the socialist party is a political organization?

A. No, I don't know that.

Q. You don't know that?

A. No, sir. I don't know what they are.

Q. Did you read in the paper about the United States Government raiding a Lithuanian newspaper office in this city?

Mr. Roberts: I object to that.

A. No, sir.

The Court: He is asked what he heard. If he heard it was raided, that is what he heard.

102 Mr. Roberts: I suppose that is so.

The Witness: I did not hear anything of it, no, sir.

By Mr. Nelson:

Q. You did not read about it in the paper?

A. No, sir.

Q. Did you read in the paper about the government agents with search warrants going to a Lithuanian paper office in this city and seizing papers?

A. No, sir.

Mr. Roberts: Challenged by the Government.

No. 90. CHARLES WALTER, sworn on his voir dire.

By Mr. Roberts.

Q. What business were you in? I see you are retired, from the list.

A. Yes, sir, I am retired. I was a butcher.

Q. Have you heard or read anything about this case against Stilson and Sukys?

A. Well, the Tageblatt.

Q. No, this is not the Tageblatt case at all.

A. I never heard anything of this, then.

Q. You never heard anything of this?

A. No, sir.

Q. If you were sworn as a juror in this case, Mr. Walter, would you feel that you could give these men a fair trial according to the law and the evidence, and only that?

103 A. I certainly could.

Q. Would the fact that they were pacifists or socialists or Lithuanians prejudice them in your minds, so that you could not give them a fair verdict?

A. It would not make any difference to me at all what kind of a party they are.

Q. It would not bias you in their favor, either?

A. Not at all.

Q. If you found they had violated a law of the United States, you would feel it was your duty to find a verdict of guilty, no matter what belief they had?

A. I certainly would.

Q. Are you a native of this country?

A. No, sir. I am from Germany.

Q. Where were you born?

A. South Germany.

Q. You are a naturalized citizen?

A. Yes, sir, I certainly am.

Q. And I take it a patriotic citizen?

A. You are right. I am.

Cross-examined.

By Mr. Nelson:

Q. What country do you think Lithuanians come from?

A. That is more than I know. I guess they come from all countries.

Q. And when you said that you were a patriotic citizen, did you mean by that that if you had a doubt in your mind
104 as to whether these defendants were guilty or innocent, you would decide they were guilty?

A. No, if they were guilty I would say so, yes, sir.

Q. Suppose you were in doubt as to whether they were guilty or not, and after the case developed you found out that the Government made certain charges against these defendants, and they denied the charges, and the charges were of such a nature that if they were guilty, they undoubtedly ought to be convicted and punished, but you were in doubt as to whether they were guilty or not from the evidence you heard, would you decide, as a matter of patriotism, that you ought to find these defendants guilty?

A. Not exactly on account of patriotism. I would do my duty as an American citizen, you understand.

Q. But if you were in doubt as to whether they were guilty or not, suppose it were six of one and half a dozen of the other, you could not make up your mind, would you feel that it was your patriotic duty to find them guilty, for fear if you did not do so some traitor might escape?

A. Well, it would not make any difference to me. The proof tells me what I have got to do.

Q. Suppose the Court told you about the law of the case and said "Now, Gentlemen of the Jury, it is in your hands. You decide whether they are guilty or innocent from the testimony you
105 have heard," and after you had heard that testimony and thought about it, and talked it over with the other jurymen, you still in your mind were in doubt whether they were guilty or innocent, which way would you decide?

A. I would take my own part in this. If I ain't quite sure, I would go against that, then, of course.

Q. I asked you if you were not quite sure, if you were in doubt, whether they were guilty or innocent, honestly in doubt, you could not make up your mind, what would you decide?

A. I don't know about that. I have to wait to see how the trial turns out, you know. That is what I have got to do. It is my opinion.

Q. Suppose the trial has finished, ended, and the testimony is all in, and you have heard everything that is to be said to the jury, and after you have heard it all you don't know whether these men are guilty or innocent, how would you decide?

A. What I think about, the way I took the case.

Q. What would you think about it?

A. I don't know that, yet.

Q. If there was a doubt in your mind as to whether these defendants were guilty or innocent, would you decide that they were innocent?

A. That is in case how the case turns out, you know. I don't know anything about the case, yet. The case has to teach me what I got to do.

103 Q. But, Mr. Walter, what I mean is this. Suppose after you have heard all the evidence, heard the arguments of counsel and heard the charge of the Court, and you were in this state of mind, that you were inclined to think possibly they were guilty, it looks as if they might be guilty, but you were not sure of it, you had a reasonable doubt as to whether they were guilty or not.

A. Well, I would say "no," then.

Q. That is a good answer.

The Court: If he had a reasonable doubt, he would say "no" or "not guilty." He would want it perfectly clear, beyond a reasonable doubt.

(Juror challenged peremptorily by the defendants.)

No. 34. JOSEPH T. HARKNESS, sworn on his voir dire.

By Mr. Roberts:

Q. Have you heard the questions that were asked of your predecessors, from that chair?

A. Most of them. Not all of them.

Q. Have you read or heard anything about this case?

A. No.

Q. Have you any such pre-conception that you could not give these men a fair trial if you knew they were Lithuanians, socialists or pacifists?

A. No.

107 Q. In other words, if you were sworn as a juror here, you would try this case according to the law and the evidence?

A. Yes.

Q. If you found under the law and the evidence that these men had violated a law of the United States, would you let them off because they were pacifists, and render a verdict merely because they were pacifists, in their favor?

A. No.

Q. If you found that they had not violated a law, would you convict them on general principles, because they were socialists, or pacifists, or any other thing?

A. No.

Q. You would not, would you?

A. No.

Q. If you found they were not guilty under the evidence, you would not convict them on general principles, would you?

A. No, certainly not. I did not understand your question.

Cross-examined.

By Mr. Nelson:

Q. If you had a doubt in your mind as to whether they were guilty or not, would you resolve that doubt in favor of the innocence of the defendants?

A. They would be entitled to the doubt if there was any in my mind, as I understand the law.

Q. What do you understand the socialist party to be?

A. Well, I know very little about it. Practically nothing.
108 My idea has always been that it is an organization that is somewhat opposed to our American form of Government.

Q. Do you understand the socialist party to be a law abiding organization?

A. Well, I know very little about it. Practically nothing. There are no socialists in our neighborhood at all.

Q. But what do you understand the socialist party to be?

A. I don't know what they are.

Q. Well, is it a religious organization or a political organization, for instance?

A. Well, it is sort of a conglomeration of both, I guess, at least, that is my idea.

Q. And is it recognized by law as a political party, do you know?

A. Well, I think it is. I think they vote. They are entitled to vote.

Q. Have you noticed whether or not the socialist party has candidates at election time to be voted for?

A. I am not clear on that. I am not sure.

Q. You do not know about that?

A. No, sir.

Mr. Roberts: I have no challenge.

Mr. Nelson: Challenged by the defendants.

108½ No. 87. THOMAS M. SLOAN, sworn on his voir dire.

By Mr. Roberts:

Q. What is your business?

A. I am a bookkeeper.

Q. With what concern?

A. L. F. Miller and Sons, grain business.

Q. Have you heard or read anything about this case against Stilson and Sukys?

A. No, sir.

Q. I take it, then, that you have formed no opinion about their guilt or innocence?

A. None at all.

Q. If you were told that they were Lithuanians, socialists or pacifists, or all three, would that so bias your mind in their favor

that you could not render a verdict according to the law and the evidence in this case?

A. No, sir.

Q. In other words, as I understand your answer, if the law had been broken, if that was clear in your own mind, the fact that there men were pacifists would not excuse them in your mind?

A. No, sir.

Q. And if you found that the law had not been broken, you would acquit them whether they were pacifists or what they were, wouldn't you?

A. That is right, yes, sir.

109 Cross-examined.

By Mr. Nelson:

Q. And suppose you were in doubt as to whether they had violated the law or not, how would you decide?

A. If I had a reasonable doubt I would give them the benefit of the doubt.

Q. If you had a reasonable doubt you would find them not guilty?

A. Yes, sir.

Q. Do you know Mr. McHenry?

A. No, sir. McHenry?

Q. Yes.

A. No, sir.

Q. What do you understand the socialist party to be?

A. It is one of the political parties of the country but I don't know much about socialists. I have not given it any thought. I have not read up what their party stands for, or anything.

Q. But you know it is a political party?

A. Yes, sir.

Q. Where do Lithuanians come from?

A. If I remember correctly, from the Central part of Austria, somewhere in that section.

Q. Do you consider that people coming from that country are alien enemies to us?

A. It seems that way, from what I read.

Q. If you were to be told that they came from a part of
110 Russia, you would be mistaken?

A. I would.

Q. If it was shown to you that they came from Russia, you would be mistaken in your present thought?

A. Yes, sir.

Mr. Nelson: No challenge.

Mr. Roberts: No challenge by the Government.

(There being no challenge, the juror was seated in the box as juror No. 9.)

No. 50. JOHN H. KELLY, sworn on his voir dire.

By Mr. Roberts:

Q. Have you heard the questions that have been put to your predecessors there?

A. I have.

Q. Have you heard anything about this case, or read anything about it?

A. I know nothing about it.

Q. Is there anything in your mind which would prejudice you in their favor, which would prevent you, if you were sworn in this case as a juror, from rendering a verdict on the evidence and the law, and that only?

A. Nothing.

Q. You would not acquit the men because they were pacifists or socialists, if the evidence showed that they violated a statute of the United States?

111 A. I cannot reply to the question regarding socialism because I know nothing about it. I know nothing about socialism.

Q. Let me put it in another way. Suppose that you found that these men, knowing what the law was, had gone to work and violated it, would you be so prejudiced in your mind, that because you thought that they had some belief that justified them in violating the law, that you would acquit them?

A. I would not.

Q. You would not?

A. No, sir.

Q. Suppose you found, after you sat in this jury box, that they had some beliefs that you could not agree on, that you could not approve of at all, and the evidence showed that they did violate the laws of the United States, would you convict them on their belief?

A. I would be bound entirely by the evidence.

Q. That is what I thought.

Cross-examined.

By Mr. Nelson:

Q. And suppose the evidence, after you had listened to all of it, left you in doubt as to whether they were guilty or not, would your mind be in such a state that you would find them guilty rather than innocent?

A. I would give them the benefit of the doubt.

Q. You do not understand what socialism means?

112 A. I know nothing about it.

Q. Do you know the socialist party to be a political organization?

A. I know nothing about it.

Q. You never noticed that the socialist party had candidates at the time you went to vote?

A. I have noticed it on the ballot, and that is all.

Q. You do know that the socialist party is a political organization?

A. I don't know anything about it.

Mr. Nelson: Challenged by the defendants.

No. 17. CHARLES EDENBORN, sworn on his voir dire.

By Mr. Roberts:

Q. You are listed as a merchant. What business are you in?

A. I am in the coal business.

Q. Do you know anything about this case against Stilson and Sukys for a violation of the draft law, a conspiracy to violate the draft law, and for a conspiracy to violate the espionage act?

A. No, I know nothing whatever.

Q. You know nothing about it?

A. No.

Q. You have formed no opinion, then, about their guilt or innocence?

A. No, sir.

113 Q. If you were sworn as a juror in this case, do you feel that, in spite of the fact that these men may be foreigners, of foreign birth, and in spite of the fact that they may be socialists, and in spite of the fact that they may be pacifists, that you could give them a fair trial on the law and the evidence, and that only?

A. Yes, sir.

Q. The fact that they were socialists or pacifists or Lithuanians would not bias you so that you would disregard the evidence and convict them if the evidence did not show they were guilty?

A. I could not.

Q. No, and the fact that they were socialists or pacifists, or whatever else they might happen to believe, would not lead you to acquit them, if you found they had knowingly violated a statute of the United States?

A. Never.

Cross-examined.

By Mr. Nelson:

Q. And if you were in doubt as to whether they were guilty or not, how would you resolve that doubt? In favor of innocence or guilt?

A. I don't know hardly what I would do—I would take the general facts, I guess, wouldn't I? If they would lead toward the fact that it was not proven, I would naturally have to give a verdict in favor of them, in my judgment.

114 Q. But if you had a doubt as to whether they were guilty, you would not decide they were guilty, but you would decide they were innocent?

A. Yes, sir.

Q. What is a socialist?

A. I beg your pardon?

Q. What is a socialist?

A. I think he is a theorist.

Q. What sort of a theory has a socialist?

A. I think he has the idea of a form of Government that is of a different standard from what we have, different civilization, as it were. Of a community character. That is my understanding of it.

Q. Do you think socialists and anarchists are the same kind of people?

A. No, sir. I don't think they are the same. No, sir. I think there is a distinction between the two.

Q. And is the distinction you have in your mind this, that socialists believe in accomplishing their purposes by means of the ballot, whereas anarchists want to accomplish their purposes by violence?

A. Would you mind repeating that, on account of my hearing?

Q. Is it your opinion that the difference between socialists and anarchists is this, that socialists believe in accomplishing their purpose by the ballot?

A. Yes.

115 Q. And the anarchists believe in accomplishing their purpose by violence?

A. Yes, that is my judgment.

Q. That is the difference you have in mind?

A. Yes, sir.

Q. Are you so hard of hearing that you cannot hear me now?

A. I can hear if the conversation is directed to me. If there is reading—if you read down there at your papers something of that kind, I won't catch it so quickly.

Q. Have you a prejudice against socialists as such?

A. I pity them?

Q. You pity them?

A. I pity them.

Mr. Nelson: Challenged by the defendants.

No. 49. HOWARD R. KNECHT, sworn on his voir dire.

By Mr. Roberts:

Q. You have heard the questions that have been put to your predecessors here?

A. Yes, sir.

Q. Have you formed any opinion about this case at all?

A. No, sir.

Q. And is there anything in your mind that would prevent your rendering a verdict according to the law and the evidence, no matter what the beliefs of the defendants?

A. No.

116 Q. In other words, you would not acquit a socialist who had violated the laws of the United States, knowingly, wilfully and intentionally, because he was a socialist, would you?

A. No.

Q. And you would not convict him just because he was a socialist, would you?

A. No.

Q. That has nothing to do with this case at all, has it, really?

A. Well, it is according to the evidence.

Q. In other words if you find that there has been a violation of the law, your verdict will say so?

A. Yes.

Q. And if you find there has not been, your verdict will say so?

A. Yes.

Q. Who the violator happens to be is entirely immaterial to you to decide that question. Isn't that right?

A. Yes, sir.

Cross-examined.

By Mr. Nelson:

Q. By "coal operator" you mean one who operates a coal mine?

A. Yes.

Q. Have you a prejudice against socialists as such?

117 A. I have not, no, sir.

Q. Pardon me?

A. No, sir.

Q. You have not?

A. No, sir.

Q. So that after you heard the testimony for and against these defendants, and it should turn out that they were socialists, it would not influence your judgment in arriving at a decision?

A. No, sir.

Q. But suppose if after you had heard all the testimony you were in doubt as to whether or not they were guilty, how would you decide?

A. I would be governed by the evidence.

Q. What do you mean by that, that you would be governed by the evidence?

A. Well, if the evidence was strong enough to convict them, I would say yes.

Q. That was not my question. Supposing that the evidence was not strong enough to convince you that they were guilty or innocent, you did not know, after you had heard both sides?

A. I would give them the benefit of the doubt, then.

Q. You would give them the benefit of the doubt?

A. Yes, sir.

Q. You said that you had no prejudice against socialists as such.

118 What do you understand me to mean when I ask you that question?

A. If they are well behaved and do what is right I have not any prejudice against anybody, if they do the right thing, and live within the law.

Q. What do you understand a socialist to be?

A. Well, I don't really know much about the organization.

Q. You don't know anything about. Do you understand a socialist to be the same as an anarchist?

A. No, sir. There is a big difference between the two.

Q. Do you understand the socialist party to be a legally constituted political party?

A. Yes, I believe they are, to a certain extent.

Mr. Roberts: No challenge by the Government.

Mr. Nelson: Challenged by the defendants.

No. 64. W. O. MINNICH, sworn on his voir dire.

By Mr. Roberts:

Q. I judge you have heard what has been asked of these gentlemen preceding you?

A. Yes, sir.

Q. Is there anything in your mind that would prevent you from giving these defendants a fair trial according to the law and the evidence, and only that?

A. No, sir.

Q. You would not acquit a man who had violated the law because his beliefs led him to violate the law, would you?

119 A. No, sir.

Q. And you would not convict a man who had not violated the law because he has got certain general beliefs?

A. No, sir.

Cross-examined.

By Mr. Nelson:

Q. Have you a prejudice against socialists as such?

A. No, I don't think I have.

Q. What do you understand a socialist to be?

A. A kind of a party something similar to our parties, but the principles are quite different.

Q. A political party with certain principles?

A. Yes, sir.

Q. Do you understand socialists to be the same as anarchists?

A. Not exactly. I don't think so.

Q. What do you understand the difference to be between a socialist and an anarchist?

A. I could not tell you.

Q. You heard the testimony,—if you were drawn as a juror in this case, and heard the testimony, and after it was all in, and the judge had given you the law in the case, and you heard it carefully, and talked it over with your fellow jurymen, and you were in doubt whether these defendants were guilty as charged or not, how would you decide, that they were guilty or they were not guilty?

A. According to the instructions of the honorable Court.

120 Q. Suppose the Court instructed you—said "You have the evidence. You decide whether they are guilty or not," and

after you had the Judge's instructions and the evidence, and weighed it carefully, you were in doubt whether or not they were guilty, how would you decide?

A. I think the honorable Court will charge us to that effect and tell us to give the doubt in favor of the defendant.

Q. To give the benefit of the doubt to the defendant?

A. Yes. At least it is that way in the smaller Courts.

Q. That is, you would have no prejudice against socialists, so that if you were in doubt you would think it was your patriotic duty to decide if they were guilty?

A. Not if the testimony is in their favor.

Q. No. I do not mean that. Suppose you are in doubt about it, would you feel it your patriotic duty to decide against them, knowing they were socialists?

A. No.

Q. Would you assume that probably they were guilty, even if it was not quite proved?

A. I don't exactly understand the question.

Q. You do not understand the question?

A. No, sir.

Q. I am trying to find out if you have a certain amount of prejudice against them, or not, which would influence your judgment.

A. No.

121 Q. Suppose it is six of one and half a dozen of the other, you don't know whether they are guilty or not guilty, you cannot be positive, you cannot be sure about it, beyond a reasonable doubt, whether these men are guilty or not guilty. Have you such a feeling against socialists, or against people charged with crime against the United States now that this country is at war, that you feel it is your patriotic duty to find them guilty for fear some rascal, who did not love his country would escape?

A. If the honorable Court would charge us to give the reasonable doubt in favor of the defendant I would so do.

Q. That is, if the Court would say to you, if you have a reasonable doubt, you are to find these men not guilty, then you would find them not guilty because the Court so instructed you?

A. Yes, sir.

Q. And you would not have any prejudice which would cause you to say "well, probably they are guilty, because while the Government has charged them, there must be some fire where there is so much smoke," and say "I will find them guilty?" You would not do that?

A. Well, the case has to be proven beyond a reasonable doubt, as far as finding them guilty.

Q. It would not matter whether they were socialists or not?

A. Certainly.

Q. Or whether they were foreigners or not?

122 A. Certainly.

Mr. Nelson: No challenge.

Mr. Roberts: No challenge.

(There being no challenge, the juror was seated in the box as juror No. 10.)

No. 58. WILLIAM P. LOGAN, sworn on his voir dire.

By Mr. Roberts:

Q. You have heard the questions that have been put to the other jurors?

A. I have.

Q. Have you formed any opinion at all about this case?

A. I have not.

Q. Is there any doubt in your mind but what you could give these men a fair trial and give the United States a fair trial, in this case?

A. None whatever.

Q. And be guided by the evidence, and that only?

A. Yes, sir.

Cross-examined.

By Mr. Nelson:

Q. What is a socialist?

A. I consider him to have practically a political party, a member of a political party. I consider him to have a political party. A member of a political party.

Q. A political party?

A. Yes, sir.

123 Q. And what are the principles of that political party? Do you know?

A. To benefit what they consider humanity.

Q. What?

A. For the benefit of humanity, as they consider it.

Q. Do you consider them a law abiding organization as a whole?

A. Socialists, I do, yes, sir.

Q. You consider them law abiding?

A. Yes, sir.

Q. As a whole?

A. Yes, sir.

Q. Do you know that they are a political party regularly recognized by law?

A. I do, yes.

Q. And do you consider a socialist about on the same par with an anarchist?

A. I do not, no sir.

Q. Do you consider the socialist party to include among its principles that of trying to accomplish its purposes thru the ballot box, and by majority rule?

A. I do, yes.

Q. If, after you have heard the testimony, you were selected as a juror in this case, and you had any doubt in your mind, a reasonable

doubt, whether these people were guilty or innocent, how would you decide, that they were guilty or that they were innocent?

124 A. Innocent. I would give them the benefit of the doubt, sure.

Q. And it would make no difference about whether they were socialists or native born?

A. No.

Q. And it would make no difference to you whether they were naturalized or unnaturalized?

A. No.

Q. I mean in reaching a decision.

A. No, it would not. Certainly.

Q. Where do Lithuanians come from? From an alien enemy country or from an allied country?

A. I am sure I don't know.

Q. You don't know exactly?

A. No, sir.

Q. You are like most of us.

A. I have not the faintest idea.

Q. Who do you work for?

A. Thompson and Huddel, a leather concern, manufacturers in Bridesburg.

Mr. Roberts: No challenge.

Mr. Nelson: No challenge.

(There being no challenge, the juror was seated in the box as Juror No. 11.)

125 No. 72. N. K. REGAR, sworn on his voir dire.

By the Court:

Q. You made an application to be excused?

A. Yes, sir.

The Court: Is there any objection by counsel to excusing this juror?

(No objection.)

The Court: You are excused from service on this jury, then.

No. 23. CHARLES M. FLEMING, sworn on his voir dire.

By Mr. Roberts:

Q. You have heard the questions that have been put to your predecessors?

A. Yes, sir.

Q. Have you formed any opinion at all about this case?

A. No, sir.

Q. As to guilt or innocence of these defendants?

A. No, sir, none whatever.

Q. Is there anything in your mind at all which leads you to be-

lieve that you cannot give both the United States and the defendants the fair value of the evidence here produced?

A. Not at all, sir.

Q. And would the fact that these men have beliefs different from yours or beliefs that you do not countenance affect
126 you either in acquitting them, if you found them guilty, or in finding them guilty if the evidence shows they were innocent?

A. It would not.

Cross-examined.

By Mr. Nelson:

Q. Do you countenance, to use the language of Mr. Roberts, the socialist party?

A. I really don't know what they are.

Q. You don't know what they are?

A. I never studied the matter particularly.

Q. But you know there is a political party known as a socialist party?

A. I do, yes.

Q. Recognized by law as such?

A. Yes, sir.

Q. You have seen different candidates appear on the ballot?

A. Yes, sir.

Q. Have you any prejudice against socialists as such?

A. Not at all.

Q. Do you think socialists and anarchists are about the same stripe?

A. No, I do not.

Q. You do not think so?

A. No, sir.

Q. What is your occupation?

A. Clerk at a banking house.

127 Q. What banking house?

A. Chandler Brothers, 1338 Chestnut Street.

Mr. Nelson: Challenged by the defendants.

No. 48. CHARLES T. KELLY, JR., sworn on his voir dire.

By Mr. Roberts:

Q. You have heard the questions that have been asked here?

A. Yes, sir.

Q. Have you formed any opinion or judgment about the guilt or innocence of these men?

A. No, sir.

Q. Is there anything at all in your mind that would prevent you from rendering a verdict according to the evidence and the law and that only in this case?

A. No, sir.

Q. The fact that these men have certain beliefs that may justify

them in thinking they have the right to violate the law,—would that cause you to acquit them because they were honest in thinking they had a right to violate the law?

A. No.

Q. Would you convict them if you thought their beliefs were highly improper if you found they had not violated the law?

A. If they had?

Q. If they had not violated the law, but you thought their
128 beliefs were all wrong, that they were bad citizens, but they had not violated the law as laid down in this case, would you convict them just on general principles, from the fact that you thought they were bad citizens?

A. No.

Q. You would go by the evidence, and that only?

A. Yes, sir.

Cross-examined.

By Mr. Nelson:

Q. You could not very well say anything else in answer to my friend's questions?

Mr. Roberts: I would not like to ask him anything else, because I think he is a good American citizen, and that is an American principle, that we will try these people on the evidence, and nothing else.

Mr. Nelson: All good Americans have to answer that way, of course.

By Mr. Nelson:

Q. Let me put it to you a little differently. Have you any prejudice against the socialists as such?

A. No.

Q. There is no doubt, of course, if your mind was convinced that they had violated the law, but what you would find them guilty?

A. I would find them guilty.

Q. And there is no doubt, of course, if your mind was con-
129 vinced that they had not violated the law, but what you would not find them guilty?

A. No.

Q. But the question is this, suppose that your mind is honestly in doubt and you are conscientiously trying to decide this case rightly, have you a prejudice against socialists in such a form that it would sway your judgment, so that you would say, "Well, it is a toss-up. I don't know whether they are or not, but I think I had better say they are guilty for fear some crook might get away." Is that the way you would feel about it?

A. No.

Q. You would not feel that way about it?

A. No.

Q. Then I understand that if you had a reasonable doubt as to

whether they were guilty or not, you would give them the benefit of the doubt?

A. Yes.

Q. What do you understand a socialist to be?

A. Well, I don't know much about it, to tell you the truth.

Q. You don't know much about it?

A. No, sir.

Q. What business are you in?

A. Mechanical dentist.

Q. In business for yourself?

A. Yes, sir.

Q. Whereabouts?

130 A. 1141 South 18th Street, Philadelphia.

Q. Do you understand the socialist party to be a political organization?

A. It is about that, yes.

Q. Do you understand the principles of that political party to be about the same as anarchists?

A. No, I cannot say that I do.

Mr. Roberts: No challenge by the Government.

Mr. Nelson: No challenge by the defendants.

The jury as selected is composed of the following jurors:

- | | |
|---------------------|---------------------------|
| 1. William H. Betz. | 7. Edwin Bready. |
| 2. Henry L. Romich. | 8. James B. Jacoby. |
| 3. Harry J. Myers. | 9. Thomas M. Sloan. |
| 4. Charles Heiber. | 10. W. O. Minnich. |
| 5. Carl Saylor. | 11. William P. Logan. |
| 6. David Pollock. | 12. Charles T. Kelly, Jr. |

The jurors were sworn and affirmed.

131 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1918.

No. 114.

THE UNITED STATES OF AMERICA

VS.

JOSEPH V. STILSON and JOSEPH SUKYS.

Charge: Conspiracy to Violate Espionage and Selective Service Acts.

Philadelphia, Pa.,

Tuesday, October 1, 1918.

Before Hon. Oliver B. Dickinson, J., and a Jury.

Present: Samuel Rosenbaum, Esq., Special Assistant United States District Attorney; Owen J. Roberts, Esq., Special Assistant United

States District Attorney, representing the United States; Henry Johns Gibbons, Esq., and Henry John Nelson, Esq., representing the defendants.

The defendants, upon being arraigned, plead "Not Guilty."

Transcript of Testimony, Charge of the Court, Ruling of the Court, and Exceptions.

132 Jurors sworn Tuesday, October 1, 1918.

Mr. Nelson: May it please the Court, now that the defendants have been arraigned, and plead "Not guilty," and are at the bar of the Court, I move your Honor to grant them a severance in this trial.

Mr. Roberts: If your Honor pleases, this is an indictment for conspiracy, and they, too, are indicted as conspirators together with others, and I think this has not even the merit of being an application as to a bill containing separate counts. There are no separate counts here whatever.

The Court: Mr. Nelson, the almost unvarying practice is not to grant a severance. If there is any special reason for it——

Mr. Nelson: I know, your Honor, it is within your discretion, and it is not because they are conspirators that I ask this. That would be rather against me, but——

Mr. Roberts: I say it is an indictment for conspiracy. I have not said that they are conspirators yet.

Mr. Nelson: Because it is an indictment for conspiracy—that is not my reason. It is because I desire to examine the jury of the panel on its voir dire, and I know that a certain number of challenges are allowed, and I would like to exercise these challenges on behalf of each individual defendant, although I know that the practice and the decisions of the Court are against it, not to allow a severance on that account, still, as I feel that it is a violation

133 of the Constitutional rights of these defendants, I ask for the severance.

The Court: Have you sufficiently stated your ground?

Mr. Nelson: Yes. That is my ground.

The Court: The motion is disallowed, and an exception noted for the defendants, individually and jointly, and the notes may show, where an exception is allowed generally, it is understood to be allowed to the joint and individual benefit of both defendants, unless otherwise stated at the time.

(Exception noted for the defendants, individually and jointly, by direction of the Court.)

Mr. Roberts: If your Honor pleases, by Mr. Nelson's courtesy, it is agreed that the Government may have its exhibits, which are serially numbered, all marked by the stenographer, so as to be identified for the purposes of the trial, at the outset of the trial. I think it will save time before we are through.

(For selection of the jury, see page —.

Government's Evidence.

VINCENT RUDAITIS, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

134 Q. Were you ever employed in the office of the Kova?

A. I need an interpreter.

Q. We will get along without an interpreter. I have never talked to you, but still they tell me you can speak English. Were you ever employed in the office of the Kova?

A. I was employed there about four years.

Q. What work did you do there?

A. I am a linotype operator.

Q. I show you papers, which are marked Government's exhibits 13, 15, 17, 19, 21, 23, 25, 27, 29, and ask you what these are.

A. That is the Kova.

Q. And that is what? Is that a newspaper, or what?

A. A newspaper of the Lithuanian Socialist Federation.

Q. How often was it published in the summer of 1917—last year? How often?

A. Weekly.

Q. Weekly?

A. Yes sir.

Q. And where was the office?

A. 229 North 6th Street.

Q. And who was the business manager?

A. Joseph Sukys.

Q. And who was the editor?

A. Vidikas.

Q. V-i-d-i-k-a-s?

A. Yes sir.

Q. Vidikas?

135 A. Yes sir.

Q. And who was the secretary and translator?

A. Joseph Stilson.

Q. And what business there did Stalioratis have—J. V. Stalioratis? What was his position?

A. I could not answer.

Q. Did he run a linotype machine?

A. He was assistant editor.

Q. Assistant editor?

A. Yes.

Q. Whose typewriter is that (referring to typewriter on table)? Who used that typewriter? Do you know?

A. I don't know.

Q. You don't know?

A. No sir.

Cross-examination.

By Mr. Nelson:

Q. Do you know whose typewriter that is by looking at it from there?

A. No.

Q. You say Stalioratis was assistant editor?

A. Editor, assistant.

Q. Stalioratis was assistant editor. Is that what you said?

Mr. Roberts: That is what he said.

Q. Is that right? Do you understand me?

A. Yes.

Q. What did Stalioratis do?

136 A. He is working in the editor's office.

Mr. Roberts: He works in the editor's office.

By Mr. Nelson:

Q. And what did he do in the editor's office?

A. He wrote for the paper.

Mr. Roberts: He wrote for the paper.

By Mr. Nelson:

Q. Did anybody translate anything for him?

A. What is that?

Q. Did anybody translate anything for him?

A. I don't understand the question.

Q. Did he understand English and Lithuanian?

By Mr. Roberts:

Q. Stalioratis. Did he speak English and Lithuanian both?

A. A little bit of English.

By Mr. Nelson:

Q. Did he write in Lithuanian for the Kova?

A. Lithuanian. All in Lithuanian.

Q. Did he get English articles and translate them into Lithuanian?

A. Stalioratis?

Q. Yes.

A. Maybe. I don't know.

Q. You don't know that?

A. No sir.

Q. Who was Stalioratis' boss?

A. There was an executive committee.

137 Q. An executive committee?

A. Yes sir.

Q. An executive committee of what?

A. I think that.

Q. An executive committee of what?

A. Of the Lithuanian Socialist Federation.

Q. Of the Lithuanian Socialist Federation?

A. Yes sir.

Q. Who was Stalioratis' boss at this newspaper office and printing plant? Who hired him?

A. I don't understand correct the questions. I may be answering not correct.

The Court: He said, "I don't understand the questions, and I may not be answering correctly."

. By Mr. Nelson:

Q. When he got his job——

Mr. Roberts: Do you claim a linotype operator knows who employed the editors?

Mr. Nelson: If he knows.

Mr. Roberts: I think that is the first question, whether he knows. Do you want Mr. Slikas to translate for him?

Mr. Nelson: All right.

(Michael Malcolm Slikas was sworn to act as interpreter.)

Mr. Nelson: I did not realize at first. In the translations that we have in the indictment, we think we have discovered four
138 or five material mistakes, and we do not feel that Mr. Slikas is as competent as might be in changing from the English into Lithuanian, and vice versa. We prefer to have another interpreter, if we can get one.

Mr. Roberts: I do not know where you can get one. Mr. Slikas is a member of the bar, and is an educated man.

Mr. Nelson: Suppose we go ahead.

The Court: I think, Mr. Nelson, the knowledge that this witness evidently has of English would always enable you to determine from his answers whether or not they are responsive to the questions, and whether or not they show an intelligent comprehension of the meaning of the questions.

Mr. Roberts: Mr. Slikas, you are a lawyer, but I want to warn you to put the questions to him in exactly the same language they are put to you.

The Court: I do not think you mean just that, Mr. Roberts, to put them in the same language they are put in to him.

Mr. Roberts: I mean in the same person. What I mean is, that some interpreters insist in turning the questions into the third person, whereas they should repeat the question exactly, "What did you say" or "What did he say"; exactly as they are put.

By Mr. Nelson:

Q. I think we will go ahead. Do you know who employed Stalioratis?

139 A. Yes.

Q. Who?

A. The executive committee with the literary committee of the Lithuanian Socialist Federation.

Mr. Nelson: I object to that answer. From my knowledge, your Honor, that is not the translation, unless it is just a mistake on Mr. Slikas' part. You do not mean the literary committee, do you?

Mr. Roberts: Mr. Slikas can only say what the witness says. That is what the witness said?

The Interpreter: That is what the witness said.

Mr. Nelson: No, the witness did not say that, if you will pardon me. Already there is a break. Please ask the witness to repeat his answer.

The Witness: Stalioratis is employed by the literary committee with the executive committee.

By Mr. Nelson:

Q. And is the literary committee a sub-committee of the executive committee?

A. No.

Q. Is it a separate committee from the executive committee?

A. Separate.

Q. How is it elected or appointed?

A. The committees?

Q. Yes, this literary committee that you speak about?

A. It is elected by referendum of all the members.

140 Q. Of all the members of the Lithuanian Socialist Federation?

A. Yes.

Q. Are you a member of that federation?

A. Yes.

Q. And are you familiar with the federation's rules with regard to elections?

A. I know some things, but not everything.

By Mr. Roberts:

Q. You know some of the things, but not everything?

A. I know some things, but not everything.

By Mr. Nelson:

Q. Who had the right to discharge Mr. Stalioratis, if you know?

A. That which employed him. That is, the executive committee, with the literary committee.

Q. It required the joint action of the executive committee and the literary committee, did it?

A. I think it was so.

Q. And where did the literary committee and the executive committee meet?

A. I don't — where they met, but I know they ordinarily correspond by letters.

Q. They ordinarily correspond by letters, and what part of the country does the literary committee come from?

A. It is composed of three members, and those three members live in various towns.

Q. Are the various towns in a certain part of the United States, or are they scattered around in different parts?

141 A. Only in the United States. They live only in the United States.

Q. Do they live in one part of the United States, or in various parts of the United States?

A. In various parts.

Q. Did Stilson, one of the defendants here, have the right to discharge Stalioratis?

A. No.

Q. Do you know who the members of the literary committee are?

A. Yes.

Q. Who are they?

A. Herman Baltrusaitis, Dr. Montirdas.

Q. Is that all?

A. That is all.

Q. Is either one of these defendants members of the committee?

A. No.

Q. How is the executive committee appointed or elected?

A. Likewise by the referendum, it is elected.

Q. Repeat that.

A. Likewise by the referendum, it is elected.

Q. And what part of the United States do the members come from?

A. Likewise from various parts.

Q. Where do they meet?

A. I don't know where they meet.

Q. How do they communicate with each other?

A. They most frequently communicate with each other by letters.

142 Q. How is the defendant, Stilson, elected or appointed?

A. Likewise by the referendum.

Q. All members of the Federation?

A. All the members.

Q. What is his position?

A. He communicates with the members, makes receipts for payment to members. I don't know everything that he does.

Q. You misunderstand my question. What is his position?

Mr. Roberts: You mean his official position?

Mr. Nelson: Yes.

Mr. Roberts: What did they call him?

Mr. Nelson: Yes.

By Mr. Roberts:

Q. What is he called?

A. He is secretary-translator.

By Mr. Nelson:

Q. And secretary-translator of what?

A. Of the Lithuanian Socialist Federation of America.

Q. And is he a member of the executive committee?

A. No.

Q. Now, so that we understand each other, is he secretary-translator of the Lithuanian Federation, or of Kova?

A. He is one of them.

Q. Is he secretary-translator of the Federation or this newspaper?

A. He is secretary-translator of the Federation.

Q. Then, he is not secretary-translator of Kova?

143 A. No.

Q. Did he have the right to discharge Stalioratis?

A. No.

Q. Did he hire Stalioratis?

A. No.

Q. Had he anything to do officially with Stalioratis in getting out Kova?

A. No.

Q. What were his duties—Stilson's?

A. He would communicate with the members of the branches, he would issue receipts for the payments by members. I don't know everything that he used to do.

Q. How did Stilson send out his notice to the branches?

A. By letters.

Q. The answer is "By letters"?

A. By letters.

Q. Did he publish any of his notices in Kova, this newspaper, in Kova?

A. Yes.

Q. You have a printing plant around there on 6th Street above Race, haven't you, where Kova is published?

A. Yes.

Q. And you publish other newspapers or magazines besides Kova?

A. Yes.

The Court: Gentlemen of the jury, we will relieve you until two o'clock.

144 At one (1) o'clock P. M. a recess was taken until two (2) o'clock P. M.

145

2 o'clock p. m.

Present: Parties as before noted.

Mr. Roberts: Mr. Nelson has consented to the withdrawal of the

witness who was on the stand so that we can call Colonel Croskey and examine him.

Col. KNOWLES CROSKEY, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. What is your official status with the United States Army?

A. I was the Recruiting Officer for the City of Philadelphia from the time the war broke out until September.

Q. Where?

A. At Philadelphia, at City Hall.

Q. To your personal and official knowledge was the recruiting and enlistment of soldiers for the United States Army and the United States Marine Corps going on in and about Philadelphia during that whole period?

A. Yes, constantly every day.

Q. How about the Eastern part of Pennsylvania to your personal knowledge?

A. Well, we had charge of the Eastern part from Coatesville East and from Pottstown down to Chester.

No cross examination.

146 V. RUDAITIS, recalled.

Cross-examination continued.

By Mr. Nelson:

Q. You have already said, Mr. Rudaitis, that the defendant Stilson, the first defendant here, had nothing to do with discharging or hiring the assistant editor Stalioratis. Is that true?

A. Yes.

Q. Now I ask you with regard to the defendant Sukys, the second man here on my left. How did he come to have this position. Was he elected or was he appointed?

A. He was appointed by the Executive Committee.

Mr. Nelson: Now I ask the interpreter did you say interpreting my question to the witness "Was Sukys elected or discharged?"

The Interpreter: I said elected or appointed.

Mr. Nelson: Will you please ask the question over again of the witness whether he was elected or appointed? Was Sukys elected or appointed?

The Witness: Appointed.

By Mr. Nelson:

Q. And by whom was he appointed?

A. The Executive Committee of the Lithuanian Socialist Organization.

Q. And he was not appointed by the Literary Committee?

A. No.

147 Q. Now, what was Sukys' position?

A. He was assistant manager.

Q. Was he assistant manager of the printing plant or of Kova?

A. Of both.

Q. And who was the business manager of the printing plant?

A. Sukys.

Q. Now, was he the business manager of the Kova?

A. Yes.

Q. Did he have the right to discharge or hire Stalioratis?

A. No.

Q. Did he have the right to say what articles Stalioratis would put into the paper or keep out?

A. No.

Q. When Stalioratis or the other editors handed him copies, isn't it a fact that the only thing he had to do was to have it printed and see that it was properly printed?

A. I don't understand the question.

Q. Who handed you the copy that Stalioratis wrote to put in the paper?

A. Sometimes Stalioratis himself and sometimes the higher editor, Vidikas.

Q. Do you mean by a higher editor the chief editor?

A. The chief.

Q. His name was Vidikas?

A. Yes.

Q. Now, did Sukys attend to the job of printing work around the office?

148 A. Yes.

Q. When Stalioratis or Vidikas handed you the copy, what did they do with the copy? Where did they place it?

A. I don't understand the question.

Q. Do you know what copy means?

A. Yes.

Q. When Stalioratis or Vidikas wrote an article for this paper Kova, how did it get from them to you?

A. They would hand it to me.

Q. And did you then set it up on the machine?

A. Yes.

Q. And after you had set it up on the machine, who took the proofs?

A. The editor.

Q. And who corrected the proofs?

A. The editor.

Q. Did Stilson or Sukys, these defendants, ever come around and attempt to correct the copy or the proofs that came from the editors?

A. As far as I recall they did not correct them.

Q. Now, as regard to Vidikas, you have already said that he was the chief editor. Was he elected or appointed?

A. Elected.

Q. By whom?

A. The members of the Lithianian Socialist Organization.

Q. Is that organization extended throughout the United States?

A. Yes.

149 Q. And they have branches in the various cities of the United States?

A. Yes.

Q. Now, did Stilson, the first defendant, have anything to do in a business way with Vidikas, the chief editor?

A. I don't know whether they had or not, but it seems not.

Q. Do you recall any occasion when Stilson, the first defendant, gave any orders to Vidikas, the editor?

A. It seems not.

Q. Did Stilson have the right to discharge Vidikas or did he hire him?

A. No.

Q. Did Stilson have the right to say that Vidikas should or should not put a certain article into the paper?

A. No.

Q. Now, with regard to the second defendant, Sukys?

A. Likewise.

Q. Likewise he had nothing to do with hiring or discharging the chief editor Vidikas?

A. Yes.

Q. Likewise he had no right to say what should or should not be put into the paper by Vidikas, the chief editor?

A. Yes.

Q. And he was the manager of the printing place on 6th Street above Race?

A. Yes.

Q. And at that printing plant this paper Kova was published?

150 A. Yes.

Q. Now, did Sukys, as business manager of the printing place, take any orders from private individuals for printing?

A. Yes.

Q. Did he make estimates and fix the price that should be charged?

A. Yes.

Q. Did he order paper?

A. Yes.

Q. Did he select the size of type that was to be used and so indicate on the copy?

A. It is so that he would buy it.

Q. I am talking now about the commercial work from private individuals.

A. I don't understand the question.

Q. When private individuals came to that printing plant and gave an order to Sukys, this defendant, to have certain pamphlets or cards printed, did this manager Sukys indicate on the copy what size type should be used?

A. Yes. He would point out how it should be done.

Q. And give the size of the paper?

A. He would mention the size.

Q. And the kind of paper?

A. All kinds.

Q. Now, isn't it true that with regard to Kova, this newspaper, the editors indicated on their copy the size of type that was to be used?

151 A. Sometimes they would and sometimes they wouldn't.

Q. And when they wouldn't indicate it, they would leave it to you or the other compositor?

A. Yes.

Q. That is there was a general style about what size of type, what display heads were to be used in Kova?

A. We would use from twelve up for the headings, twenty-four points or thirty-four points.

Q. That is they would use twelve point to twenty-four point or thirty-four point, the standard sizes?

A. Various sizes.

Q. Now, isn't it true that neither Stilson nor Sukys had anything to do with the editors in the getting out of Kova?

A. I don't understand the question.

Q. Isn't it true——

Mr. Roberts: I must object to the question. I have no objection to the facts being elicited, but I do not think the witness ought to be asked to express his opinion, or to give his conclusion as to what anybody did or did not do there.

Mr. Nelson: Question withdrawn.

By Mr. Nelson:

Q. Tell whether this defendant Stilson or this defendant Sukys had anything to do with the getting out of this paper Kova?

Mr. Roberts: That is the same question in another form.

The Court: I don't see any objection to that. Ask him whether or not he knows if they had anything to do with getting it
152 out.

The Witness: I know that Sukys was the manager of the Kova.

By Mr. Nelson:

Q. I ask you then with regard to Sukys, did he have anything to do with getting it out?

A. He had nothing to do.

Q. And with regard to Sukys, isn't it true that the only thing he had to do with the getting out of Kova was that he bought paper and saw that the presses were run properly and saw that the printers, the compositors, did their work properly?

A. Yes.

Q. Isn't it true that Stilson, this first defendant, simply had offices as secretary translator of the Socialist Federation in this printing plan?'

A. Yes.

Q. Are you a Lithuanian?

A. Yes.

Q. Where is Lithuania?

A. It is a part of Russia, in Europe.

Mr. Roberts: I think that is a matter of which both the court and jury will take judicial notice if Mr. Nelson will quote his geography correctly.

By Mr. Nelson:

Q. Are you an American citizen?

A. No.

Q. You are a subject of what country?

153 A. Russia.

Q. Now, with regard to this typewriter. Come right over and look at this typewriter. Merely by looking at that typewriter can you tell me and tell the court and jury whose typewriter that is?

A. No.

Q. Now, was there a typewriter at this printing plant where the newspaper Kova was published at 6th Street above Race?

A. Yes, sir.

Q. How many typewriters were there?

A. One.

Q. And who used that typewriter?

A. Stilson used it.

Q. Anybody else?

A. Vidikas used it.

Q. You mean by Vidikas this chief editor?

A. Yes.

Q. Who else? Did anybody else use it?

A. Baltrusaitis used it.

Q. Anybody else?

A. I don't know who else used it.

Q. Was the typewriter locked up so that anybody could not get access to it that came into the place?

A. It was not locked up.

Q. Did other people besides people you have mentioned, namely Vidikas, Stilson and Baltrusaitis go in and out of that plant?

A. Yes.

154 Q. Who had keys to get in and out of this place after it was closed for the ordinary work of the day?

Mr. Roberts: If you know.

Mr. Nelson: Yes, I will add that.

The Witness: Yes, I know.

By Mr. Nelson:

Q. Who had keys?

A. Sukys had them, I had them, Baltrusaitis had them and Vidikas. It seems that nobody else had them. Yesolvaicz had them.

Q. Do you know how many keys were out in various people-hands?

A. I don't know how many there were.

Q. Were people ever in that printing plant after it had been closed for the day's work, if you know?

A. I don't understand the question.

Q. What time was it that the printing plant closed down?

A. About 6 o'clock the working men would depart.

Q. Now, were you ever there an evening after 6 o'clock?

A. Yes.

Q. Were you up on an evening after 6 o'clock when Stilson was not there?

A. Yes.

Q. Were you ever there of an evening after 6 o'clock when Sukys was not there?

A. Yes.

Q. Did you see other people there besides these two defendants of an evening?

A. Sometimes I would see.

155 Q. And how often were you there of an evening?

A. I don't know how frequently but I would sometimes be there.

Q. Well, was it once a month or once a year?

A. Sometimes on an occasion I would be there several times a week and sometimes I would not be there for a month.

Q. Were those editors, Vidikas and Stalioratis ever there at night?

A. Yes.

Q. Were you present when the government agents came there with a search warrant and took the stock and files of the paper?

A. Yes, I was.

Q. And at that time was Stilson there?

A. He was.

Q. And was Sukys there?

A. Yes.

Q. These two defendants?

A. Yes.

Q. There have been two other defendants mentioned here, Vidikas the chief editor, and Stalioratis, the assistant editor. Were they there?

A. Yes.

Q. What became of them?

A. I don't know.

Q. Well, were they arrested?

A. I don't know. It appears at the time they were not.

156 Mr. Nelson: May I ask, Mr. Interpreter, didn't he say they disappeared instead of I don't know where they were?

The Interpreter: No, he didn't say that. He said I don't know. It appears not.

By Mr. Nelson:

Q. Well, isn't it true that they simply ran off?

A. Yes.

Mr. Roberts: If he knows.

Mr. Nelson: Well, do you know that they ran off?

The Witness: They disappeared when the arrest was made.

Redirect examination.

By Mr. Roberts:

Q. Do you know this machine here (indicating mimeograph)?

A. I cannot see it.

Q. Do you know that machine?

A. I saw it.

Q. Where did you see it?

A. One similar to that was in the office of Kova.

Q. Who used it?

A. Ordinarily Stilson used it.

Q. Did you ever see anybody else use it in the office?

A. I didn't see.

Q. Any one else use it?

A. I didn't see.

Q. Now, do you know how that machine is used?

A. I do not know.

Q. Do you know that a stencil is cut on the typewriter and
157 then used on that machine.

Mr. Nelson: I object to that. He says he don't know.

The Court: Oh well, he can test his knowledge.

Mr. Roberts: I will withdraw the question.

By Mr. Roberts:

Q. Did you ever see Stilson cut a wax stencil on the typewriter and then use it on that machine?

A. I don't know how the machines are used.

F. J. BURAGAS, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. From where did we bring you for this trial?

A. Camp Lee, Virginia.

Q. How long have you been down there?

A. Ten weeks.

Q. You are a High Private?

A. Yes.

Q. Where did you live before you went to Camp Lee?

A. 56 Sheridan Street, Wilkes-Barre, Pa.

Q. Do you remember the date when you first saw Government Exhibit No. 1 which I now hand you?

A. Yes.

Q. What was the date when you first saw that?

A. August 24th, 1917.

Q. Where did you see it?

158 A. At Holy Trinity Lithuanian Church, corner of Meade and South Streets, Wilkes-Barre, Pa.

Q. Who handed it to you?

A. George Mitchell.

Q. He is in court now, isn't he?

A. He is.

Q. And where did you take it? What did you do with it?

A. I read the headline of it and I took the rest of the circulars away from the boy.

Q. What boy had them?

A. George Mitchell.

Q. And then what did you do with them?

A. I kept one and tore the rest up.

Q. What did you do with the one you kept?

A. I stuck it in my pocket.

Q. And then where did you take it?

A. I took it to the court.

Q. You mean to the police?

A. To the police, yes, sir.

Q. And this is the circular?

A. That is the circular.

Q. You have seen it a number of times since?

A. Yes, sir.

Q. You were here at a preliminary hearing, were you not?

A. Yes, sir.

Q. And then you were here when there was a bill found?

A. Yes, sir.

159 Q. Now, where is that church? That was on a Sunday morning, was it?

A. Yes, sir.

Q. And where is the church?

A. Located on the heights of Wilkes-Barre.

Q. It is a Lithuanian church, is it?

A. Yes, sir.

Q. And this young man was handing these circulars out around the church?

A. Yes.

No cross-examination.

GEORGE MITCHELL, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. How old are you, George?

A. 14.

Q. You are the George Mitchell that Buragas just referred to, are you?

A. Yes, sir.

Q. I show you government exhibit No. 1 and ask you if you ever saw that before?

A. Yes, sir.

Q. Where did you see it and where did you get it if you had it?

A. A fellow by the name of Paul Sondergos handed it to me.

Q. What did he ask you to do with it?

160 A. Told me to peddle them out for him.

Q. And what did he say he would give you for peddling them out?

A. A nickle.

Q. And you were giving them out at the time Buragas stopped you, is that right?

A. Yes, sir.

Q. At the church?

A. Yes.

Q. Did you know what was in them?

A. No.

Q. Had you read one?

A. No, sir.

Q. And afterwards, when Buragas took them from you, did you know what was done with this one?

A. I don't know a thing about them afterwards.

Q. Now, that was on a Sunday morning?

A. Yes, sir.

Q. In Wilkes-Barre?

A. Yes, sir.

Q. At the Lithuanian Church?

A. The Lithuanian Church.

Cross-examination.

By Mr. Nelson:

Q. What date was it?

A. I don't remember the date myself.

Q. Do you remember the month?

A. What did you say?

161 Q. It was on a Sunday morning of what month?

A. I don't remember the month myself but I believe it was in August.

Q. That is it was in the summer time?

A. It was in the summer.

BENJAMIN GIBOVICZ, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. You live in Wilkes-Barre?

A. Yes.

Q. I show you a circular which is marked "Government Exhibit No. 1." Have you ever seen that before?

A. Yes, sir.

Q. Where and when and under what conditions did you see it?

A. At the Holy Trinity Lithuanian Church at the Heights of Wilkes-Barre on August 24, 1917.

Q. Was that on a Sunday morning?

A. Yes, sir.

Q. Who was giving it out?

A. George Mitchell.

Q. And did you see them taken away from him?

A. No, I did not.

Q. You didn't see them taken away from him?

A. No.

Q. Did you get one?

A. Yes.

162 Q. What did you do with yours?

A. I simply took it and tore it up after I read it.

Q. You did read it all through?

A. Yes, sir.

Q. You can read Lithuanian?

A. Yes, sir.

No cross-examination.

ROY C. McHENRY, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. You are a special agent of the Department of Justice of the United States, are you not?

A. Yes, sir.

Q. And also a special assistant of the United States District Attorney of the Middle District?

A. Yes, sir.

Q. And in your official capacity as such, did Government Exhibit No. 1 which has been here identified by this young man, come to your attention?

A. Yes, sir.

Q. About what time?

A. About the 26th day of August, 1917.

Q. Did you get it into your possession?

A. Yes, sir.

Q. Who has had it in his possession ever since then to the day of this trial?

163 A. I have.

Q. Now Mr. McHenry, as a result of some investigation that you made about the matter, did you come to Philadelphia?

A. Yes, sir.

Q. I now show you government exhibit No. 23 which appears to be a Lithuanian pamphlet mimeographed from a typewriter. Did you find that somewhere?

A. Yes, sir.

Q. When you came to Philadelphia and made an investigation, did you go to the offices of Kova at any time?

A. Yes, sir.

Q. If so, can you give me the date?

A. December 7, 1917.

Q. Did you have the paper known as Government Exhibit No. 23 which you now have in your hand with you at that time?

A. I did.

Q. Who did you meet at the office of Kova?

A. I met Mr. Stilson, the defendant there, Mr. Sukys, Mr. Staligratis, Mr. Rudaitis and another man who was working in the office and there were two or three other bystanders who happened to be in there.

Q. Did you show the paper that I have just shown you, Government Exhibit No. 23, to any one?

A. Yes, sir; to Mr. Stilson.

Q. What did you say to him about it?

A. I said, "Mr. Stilson, did you get this paper out that is signed with your name," and he looked at the last sheet, the third
164 sheet, and he said, "Yes, I got that out," and I said, "Have you any more of them?" And he said, "No, they are all gone." And I looked and I found four or five more copies of the same thing, the same kind of paper.

Q. You mean down there at the office of Kova you found some?

A. Yes, right then. I looked around and I found them and I said, "There are some after all."

Q. You had with you at that time a United States Marshal who had a warrant of Search and Seizure, had you not?

A. Yes, sir.

Q. That pamphlet there you say is signed. Is it signed in handwriting or typewriting?

A. It is signed in typewriting.

Q. It is signed "J. V. Stilson, S. S. S. Buitais." Do you know enough about Lithuanian to know what that is?

A. Yes, sir, that is secretary translator.

Q. Did you ask Mr. Stilson anything about where or how that was made?

Mr. Nelson: I haven't made any objection so far, but I think now that I ought to object until the witness has been asked whether he had notified the defendant that anything he said might be used against him.

By Mr. Roberts:

Q. Just one minute and I will cover that. Had Mr. Stilson before that time, been served with any warrant of arrest?

A. He had. He was under arrest. Deputy Marshal Kelly had taken him into custody.

165 Q. He understood that he was under arrest? Had been so informed?

A. He understood. We didn't tell him anything that he said would be used against him, but all——

Mr. Roberts: I call your Honor's attention to the fact that this paper is no paper involved in the indictment at all.

By Mr. Roberts:

Q. Did you ask him where that paper had been made?

A. I said, "Did you make that paper up?" And he said, "Yes, I made it on the typewriter."

Mr. Nelson: I object.

The Witness: Then I printed it with the mimeograph.

Mr. Nelson: I object to the testimony that Mr. McHenry is giving now as to what this defendant Stilson or any other defendant said while under arrest, as it is not admissible in view of the fact that Mr. McHenry stated that he had not warned these defendants that anything they might say would be used against them.

The Court: I think we ought to have it developed whether the statement was made voluntarily or whether it was elicited and, if so, under what circumstances it was elicited.

Mr. Roberts: Well, I understood you to say, and if I am wrong, correct me, that you showed them this grey paper here.

The Witness: Yes, sir.

By Mr. Roberts:

Q. I understand further that you asked him if he made it?

166 A. Yes, sir.

Q. Now then I want to know if he made a connected reply to that and whether what you are going to testify to now was all one reply or whether further questions were asked him and he made further reply? Do you understand my question?

A. He said, "Yes——"

Q. I don't want what he said now.

A. He answered in one response.

Q. Which is what you are going to tell us now?

A. All, in answer to that question, yes.

Mr. Roberts: Now I press the question as to what he said.

Mr. Nelson: And I press the objection for the reasons already stated.

Objection overruled. Exception noted for the defendants individually and jointly by direction of the court.

Mr. Nelson: I further move that all of the testimony that was given in this line of examination prior to my objection be stricken out.

Motion denied. Exception noted for the defendants individually and jointly by direction of the court.

The Court: That is on the same ground, I assume?

Mr. Nelson: On the ground that it was a series of questions and answers and the witness has already stated that the defendants had not been warned that anything they might say would be used against them.

167 The Court: Let me inquire whether there is any special rule of evidence in the courts of the United States upon that question.

Mr. Roberts: I think the rule is that there is no such necessity. I have always so understood the law.

Mr. Nelson: I don't understand it that way.

The Court: My question was is there any different rule that prevails in the United States courts than that which prevails, we will say, in the principles of the law of Pennsylvania.

Mr. Nelson: That was my thought. It seems to me that is the rule I am contending for, in the State Court.

Mr. Roberts: I don't think it is.

The Court: The rule there is if a statement is elicited under a hope or promise——

Mr. Roberts: Or a threat.

The Court: Of course, a threat, it is then inadmissible, and if there is anything in the nature of immunity or promise of reduction of punishment or anything which might tempt a man to make a statement which he thought his interrogator desired, and, in that case, I take it that he must be warned before that statement is admissible that anything he may say may be used against him, but if there is nothing in the way of persuasion or inducement about it, then nothing need be said.

Mr. Nelson: I think, however, there are some cases that go to the length of saying——

168 The Court: There is a very great difference of opinion upon the nature of what may be used and what may not be used.

I will fully protect you by an exception and further by any review of the question which you may desire to make.

By Mr. Roberts:

Q. Now tell us the whole of Mr. Stilson's answer.

The Court: Of course, the District Attorney takes the responsibility of deciding whether or not he will introduce this line of testimony.

Mr. Roberts: Of course.

The Witness: When I first asked him did he make the circular

which is signed by his name he said, "I did." I then said, "Did you make it on that typewriter," which is the typewriter over there on the table and run it off on that stencil machine, which was also in the room with him, and he said, "Yes," and then I said, "Who else uses that typewriter besides you?" And he said, "No one but me uses that typewriter." Then I showed him Exhibit No. 1.

By Mr. Roberts:

Q. You hadn't showed him this exhibit No. 1 before?

A. I hadn't shown him that before.

Q. That is Exhibit No. 1.

A. I showed him that and I said, "Did you make that?" And he said, "No, I didn't make that."

Q. Did he look at it before he said he didn't make it?

A. I held it up before him and he said, "No," the minute he saw it. And then I said, "How do you know if you don't look the paper over?" And he said, "I didn't make it."

Q. Now I show you Government Exhibit No. 27, which appears to be another mimeographed original of the same thing as Exhibit No. 1, except that it is on yellow paper and has some writing on it.

A. Yes, sir.

Q. Where, if anywhere, did you discover that in the office?

A. I found that in the office of Kova and in the rear part of Mr. Stilson's office.

Q. Was it in a drawer or a desk or where was it?

A. It was in a pile of papers on the desk.

Q. Did you inquire of any one or did any one tell you whose desk it was in the presence of these defendants?

A. I asked Mr. Sukys in Mr. Stilson's presence before that who had the desk in back and they said that the editors did.

170 By Mr. Roberts:

Q. You took at that time that typewriter and that duplicating machine?

A. Yes sir.

Q. Where has that typewriter been from that day to this?

A. That typewriter has been in the safe except at such times as we had it out. It has been in the safe of the Bureau of Investigation here in this building.

Q. 314, of this building?

A. 315, of this building, and the duplicating machine has been in room 326, the exhibit room. I got it out this afternoon.

Q. It has been there until you got it out this afternoon?

A. Yes sir.

Q. What did Mr. Sukys at that time say to you with regard to his connection with the paper, if anything?

A. He said he was business manager of the paper, and at my request he turned over the mailing list, and said he got out the mail. Mr. Stilson was also present at the time.

Mr. Nelson: May it please the Court, so as to keep the record straight, may I have entered an objection? I assume you are going to overrule it, and give me an exception, on the same ground with regard to the statement made by Mr. Sukys.

The Court: You may have the record show the objection in the form in which it will fully raise your question. I will rule on it.

171 Mr. Nelson: It is objected to by the defendants, the testimony by the witness McHenry, with regard to statements made by the defendant Sukys, after he had been arrested. It constitutes statements made under duress, and the statements are not admissible, because, as has been previously stated by the witness McHenry, he did not warn the defendant Sukys that anything he might say would be used against him.

The Court: I did not catch the circumstances under which this statement was made, if that has been developed. A man being under arrest, prima facie, the statements would be inadmissible, but if the circumstances are such as to raise the question merely of a voluntary statement, they may not be. I will sustain the objection at this time, unless the circumstances have been developed——

Mr. Roberts: I think they have been developed.

By Mr. Roberts:

Q. Was this man in custody of the marshal or anybody at the time you talked to him?

A. He had moved away from the marshal. I said, "Mr. Stilson, will you help me get out the papers?", and the things that we were asked. He said, "Certainly." He came over.

Q. And were you getting out the papers?

A. I was getting out the papers, and he came over there. No one had hold of him.

By the Court:

Q. No, but the question is, had he been arrested at that time?

—A. He had been taken into custody under the warrant.

172 By Mr. Roberts:

Q. The warrant had been read to him?

A. It had been read to him.

Q. And then you said to him, subsequent to that, "Will you come over and help me get out some papers?"

A. Yes.

Q. And he said he would?

A. Yes sir.

Q. I do not clearly understand which way it was. Did he come over to you first, or did you ask him to come over to you first?

A. No, I asked him to come over.

Q. And it was while you were working over getting out the papers that the conversation occurred?

A. Yes sir. I did not take him under arrest at all.

Q. You did not have him under arrest at all?

A. No sir.

Q. And where was the deputy marshal at the time this conversation occurred?

A. Well, he was standing outside the rail, about six or eight feet away.

Q. Had there been other conversation between you and Stilson before that?

A. Yes. I asked him if he was Stilson first, before he was taken under arrest, and he said he was not, that Stilson had gone out to lunch, and I went over to Mr. Sukys and asked him his name.

They were standing right together, and he said his name was Sukys. Sukys was not under arrest, he was not taken under arrest at that time, nor for several days afterwards.

Q. Did this conversation about the authorship of this circular take place in Suky's hearing?

A. I would not say?

Q. You would not say?

A. I would not say for certain because he was some little distance away at the time.

Q. You had no warrant at that time for Sukys or Vidikas or Stalioratis?

A. No, sir, only for Stilson.

Q. Something was said about where Stalioratis and Vidikas went to?

A. While we were standing there, at first Vidikas, he and Stalioratis were also standing there, and then I commenced to talk with Stilson, and all at once the deputy marshal came up and said, "Those fellows got away." There was quite some excitement raised, and I said, "Who were they?" He said, "Those two editors," and I looked up. I was going through these papers. I looked up, and they were gone. I heard they had climbed out the——

Q. You say you heard. You heard that they had gone?

A. Yes sir.

Q. And have never seen them from that day to this?

A. I have never seen them since.

Q. Have you endeavored to find them?

174 A. Yes sir.

Mr. Roberts: Now, do I understand that your Honor has stricken out the testimony as to what Stilson said?

The Court: Stilson?

Mr. Roberts: Yes.

The Court: No. I thought it was respecting the other defendant.

Mr. Nelson: That was my second motion. My first motion, though, was with regard to Stilson, and I also made a motion to strike out all that had previously been said.

The Court: I understood that. You first made your objection, and you were allowed an exception. Then you made a motion to strike out, which was denied, and an exception allowed to you.

Now, you said you wanted to make substantially the same motion. I thought it was with respect to the other defendant.

Mr. Roberts: I did not catch that.

Mr. Nelson: Yes, that was it.

Mr. Roberts: I am not using any admission as against Sukys as to this circular. I am not using that.

The Court: His objection was to any statement made by Sukys.

Mr. Roberts: I have not asked him as to any statement made by Sukys.

The Court: If he was under arrest, prima facie, the statements would not be admissible against him unless the circumstances
175 indicated that they were voluntary. As I understand it now——

Mr. Roberts: There was no statement made as to Sukys. We have all been working under cross-purposes.

The Court: He was not under arrest?

Mr. Roberts: He was not under arrest, and I have no statement as against him, so that leaves Sukys out of that part of it.

The Court: Then, to clear the record, you might as well withdraw the objection.

Mr. Roberts: Yes. I do not want to prove any admissions against Sukys, because he did not make any there, except that he was business manager, but that is on the record. If it is not, I want to get it on.

The Court: Mr. Nelson withdraws the objection, which will make the record clear on that.

Mr. Nelson: Yes.

By Mr. Roberts:

Q. Mr. McHenry, I show you some photographic copies in folders, of which I have ten duplicates here of this first one, Government's Exhibit No. 1. Did you see those photographs made?

A. Yes sir.

Q. Where were they made?

A. New York City, 267 Broadway, at Mr. Lawrence C. Horton's office.

176 Q. He is a photographer?

A. Yes sir.

Q. Were you there when the plates were developed?

A. Yes.

Q. And those prints brought from them?

A. Yes.

Q. You stayed through the whole process?

A. I stayed through the whole process.

Q. And you kept Government's Exhibit No. 1 in your possession, or under your eye, while the whole thing was done?

A. Yes sir.

Q. And you brought back these photographs with you?

A. Yes sir.

Q. I show you Government's Exhibit No. 32, which is marked up

here at the top "Copy prepared by M. Malcolm Slikas." Was that made in your presence?

A. Yes sir.

Q. Where was it made?

A. In the Bureau of Investigation, this building.

Q. On what machine was it made?

A. On that Remington typewriter down there, No. 331,215.

Q. The typewriter that sits here on the table?

A. Yes, the No. 10 Remington.

Q. Were you present when the photographs of this were prepared by Mr. Horton?

A. Yes sir.

177 Q. Was it done at the same time?

A. Yes sir. A little later.

Q. I mean, it was done at the same sitting?

A. Yes.

Q. You brought Government's Exhibit No. 32 back with you at the same time?

A. Yes sir, and——

Q. Go ahead.

A. And I said that that was prepared on the typewriter. A stencil was prepared on the typewriter for that Government Exhibit No. 32, and then Mr. Slikas, in my presence, put it on another stencil machine and ran off a copy. That is where it came from.

Q. In other words, Government's Exhibit No. 32, which was to be used as a standard, was made by cutting a stencil and mimeographing it so as to make it as near under the same conditions as possible as Government's Exhibit No. 1?

A. Yes sir.

Q. And you mimeographed that stencil made on the typewriter?

A. Yes sir.

Q. For comparison?

A. Yes sir.

Q. Those are all duplicate photographs, are they not?

A. I assume so.

178 Q. You have looked them over, have you not? Those are the ones you brought back?

A. Yes.

Q. From Mr. Horton?

A. Yes sir.

Q. Simply for use and convenience?

A. Yes sir.

Q. There is another thing I want to ask you. You procured that from the office of the Kova, didn't you, that bound file?

A. Yes sir. Mr. Sukys let me take it on September 16th of this year.

Q. You brought it here to the Department?

A. I brought it.

Q. This bound volume?

A. Yes.

Q. Have you looked it over to see if all the issues are in here, week by week?

A. I have not.

Cross-examination.

By Mr. Nelson:

Q. When you got this bound volume of the Kova from Mr. Sukys a few weeks ago——

A. Yes sir.

Q. —you did not have a search warrant for it?

A. Yes sir, I did.

Q. You did have a search warrant?

A. Yes.

179 Q. I understood you to say he gave it to you.

A. He turned it over to me. I said he gave it to me. He handed it to me very nicely.

Q. You are quite sure, are you, Mr. McHenry, that Mr. Stilson said that he was the only one that used that typewriter?

A. That is what he said to me.

Q. Were there any other people standing around when he said that to you?

A. Mr. Bolling was there. Horace Bolling, special agent.

Q. That is, one of the agents of the Department of Justice?

A. Yes sir.

Q. Anybody else standing around there?

A. There were other people in the room, but I don't know whether they overheard what was said. We simply carried on the conversation in an ordinary tone of voice.

Q. Mr. Sukys was there, wasn't he?

A. I think he was getting some papers or something out of a desk for Mr. Kelley at the time.

Q. Do you — Miss Baltrunis?

A. Yes sir.

Q. She was standing there, wasn't she?

A. I think she was down further at the end of the line, a little below Mr. Sukys' desk. It might have been within hearing, if her hearing was unusually acute, but I don't think she was within hearing.

180 Q. It was in the front part there?

A. It was in the front part of the office.

Q. Behind the railing?

A. Yes sir.

Q. It was not back in the editors' room, which is in the back?

A. No. That is a considerable distance back.

Q. And Government's Exhibit No. 27 that was shown you was found in the editors's desk in the back of the building?

A. Is that the yellow circular?

Q. I don't know really what it is. It is Government's Exhibit No. 27.

A. I could not tell from the number.

Mr. Roberts: Here is Government's Exhibit No. 27.

The Witness: Yes, that was found later on when we were collecting papers.

By Mr. Nelson:

Q. You made a thorough search of the premises?

A. Fairly so, yes sir.

Q. You were looking for papers that might be incriminating?

A. Yes sir.

Q. Did you find any other papers like that in the building?

A. No sir, that was the only one of that sort.

Q. And you say that Stilson did say to you that with regard to Government's Exhibit No. 1 he did not do that?

A. Yes, sir.

181 Mr. Roberts: That is the one charged.

The Witness: Yes, sir, I remember Government's Exhibit No. 1.

Mr. Roberts: That is the paper complained of.

The Witness: Yes, sir.

By Mr. Nelson:

Q. I am going to ask you a question, but do not answer it until Mr. Roberts has a chance to object, if he does want to object.

A. All right.

Q. You say Sukys was not arrested at this time. Is that right?

A. He was not.

Q. Is it not true that he subsequently was arrested on a charge similar to this, and the Grand Jury did not find a true bill against him?

Mr. Roberts: I object to that. It is highly improper.

The Court: What help could that be to us? I do not catch its relevancy. It is not cross examination. The question as to his arrest merely grew out of the misapprehension that you and I were under as to the purpose of the District Attorney in his interrogation of this witness. Your objection assumed that he was about to use something in the nature of a confession, and I suggested the question, in fact I think I asked it myself, as bearing upon that. It appeared that there was no such purpose in the interrogation. So the objection was withdrawn, and everything connected with it fell from under it. Now, of what value is it to know—

182 Mr. Nelson: This is another thing. The witness was asked, or as a result of a question the witness said that Sukys was not arrested at this time, and I want to ascertain why he was not arrested.

The Witness: I can tell you that.

Mr. Roberts: I do not think he can go into that. I do not think we are interested in that. The purpose of the question is an improper one.

The Court: The query is, in what way will it help us to determine

this issue? If it is of the slightest help to us, let us have it, but if it is not of any value to us, isn't it better that our minds should not be distracted by something that does not help us any, to determine this issue?

Mr. Nelson: Except in this, I want to do all I can for both of my clients.

The Court: Certainly, and if you can show that it has an effect helpful to them, that is the strongest kind of relevancy and pertinency. That is what the jury should know. But if it does not have any bearing, why go into it? What bearing does it have?

Mr. Nelson: My thought is this. This is what bearing it has, that if Sukys was not arrested at this time, then apparently, in the eyes of the authorities, nothing had been discovered at that time which would tend to incriminate Sukys, and then it would put the burden on the Government, if it had anything, to show something that had been discovered subsequently. Whether it would
183 have or not I do not know.

The Court: I do not see that there would be anything that would compel that inference. We have the fact—it is now in the case—that at that time he had not been arrested. That being in the case as a fact, the jury can draw any inference that seems to their minds to be justified. Now you are asking him whether or not he was arrested at a subsequent time, and what the result of the arrest was. I do not see that it has any bearing. I do not think it is Germane as cross examination, to begin with, and I do not think it has any relevancy. So for the present I will sustain the objection and give you an exception. If there is any reason, indicating its relevancy, which occurs to you hereafter, I will permit you to renew the question.

(Objection sustained.)

(Exception noted for the defendants, individually and jointly, by direction of the court.)

HORACE H. BOLLING, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. Where are you now located?

A. Atlantic City.

Q. In last December where were you located?

A. Here, 314 Post Office Building.

Q. What is your official position?

A. Special Agent, Department of Justice.

184 Q. Of the United States?

A. Yes, Bureau of Investigation.

Q. Were you present at the office of the Kova on December 7, 1917?

A. I was, yes, sir.

Q. With Mr. McHenry?

A. Yes, sir.

Q. I wish you would tell us in your own way what occurred between Mr. McHenry and Mr. Stilson—whether it was before or after Mr. Stilson's arrest first, directing your attention to this conversation between Mr. McHenry and Mr. Stilson, was that before or after Mr. Stilson had had the warrant read to him?

A. Mr. McHenry and myself went into the office and we inquired for Mr. Stilson and we were talking to Mr. Stilson at the particular time, and he denied his identity. He said he was out to lunch, and then he finally acknowledged that he was Mr. Stilson.

Q. Do you know if the warrant was read to him by the Marshal?

A. I am not positive.

Q. You are not positive?

A. No, because I was looking through the desk, another desk, at the particular time. I know we were rounding them up.

Q. Did you hear a conversation between Mr. Stilson and Mr. McHenry?

A. Yes. Mr. McHenry called me aside, called me over there where he was talking to Mr. Stilson.

Q. Did you see a gray paper there?

A. Yes, I saw a paper. In fact I—

185 Q. You had seen it before you went down there, I guess?

A. Yes, sir.

Q. I show you Government's Exhibit No. 23?

A. Yes, sir.

Q. Is that the paper they were discussing?

A. That is the paper, yes, sir.

Q. Will you be good enough to tell us whether any threat or any promise of any kind was made by Mr. McHenry to Mr. Stilson in your hearing concerning any question?

A. Absolutely nothing.

Q. Just tell us what the conversation was, as nearly as you can remember it.

Mr. Nelson: So that I understand, the objection I made to the previous question similar to this applies to this witness now?

The Court: You may now, if you choose, develop any facts which, in your judgment, would have a bearing upon the question preliminary to the question being asked him. The District Attorney has developed the fact that before the making of the statement he is now about to interrogate the witness on, nothing was said to him, justifying the inference that it was a voluntary statement. If you wish to develop any other facts, you may cross examine the witness on that point.

Mr. Nelson: The District Attorney has already developed the fact that this was after the warrant had been served.

Mr. Roberts: I have developed that from the other witness.

186 Mr. Bolling did not happen to remember that fact, but I am perfectly willing to stand on that. That was proved affirmatively.

Mr. Nelson: My objection goes only to the fact, that after the

serving of a warrant, there is duress, and I think I can find cases that go that far.

The Court: Yes, you can find cases on both sides of that proposition.

Mr. Nelson: I object on the ground that there was duress because of the service of this warrant.

The Court: You will find cases that go farther than that. You can find a line of cases that go to the extent of saying that, *prima facie*, there is coercion. You wish to renew the objection?

Mr. Nelson: I renew the objection to this witness saying anything that would tend to incriminate these defendants out of their own mouths in view of the fact that, first, there was duress after the service of the warrant, and, second, due to the fact that the witness has said that nothing was said to these defendants with regard to using their words against them subsequently.

The Court: The objection is overruled and an exception noted for the defendants with leave, after the testimony has been given, if you so desire, to further object to this through and by a motion to strike out.

(Objection overruled.)

187 (Exception noted for the defendants, individually and jointly, by direction of the court.)

By Mr. Roberts:

Q. Will you give us the conversation as you remember it?

A. Mr. McHenry asked him, did he write that——

Q. The circular?

A. The circular.

Q. Government's Exhibit No. 27?

A. Yes, sir, and he said yes, I think that is the one he said "Yes." He said "Yes," he did, and he asked him did he make it on the typewriter. In fact, he asked him if anybody else used the typewriter, and he said no, no one else in the office ever used the typewriter, and then he said that he made it on the typewriter and copied it off on his other machine.

Q. Then, as to the other one, Government's Exhibit No. 1——

A. He denied making that.

Q. He denied making that one?

A. Yes, sir.

Cross-examined.

By Mr. Nelson:

Q. Who else was present at the time this conversation took place between Mr. McHenry and Mr. Stilson and you?

A. No one else. I think we were up at the corner of his office, or right next to his desk, and the rest of the people were looking around, searching for evidence, or anything, - and a young lady——

188 Q. The rest of the special agents, that is?

A. No, Post Office inspectors and the Deputy Marshal.

Q. The Government inspectors were scattered around?

A. And the business manager, that gentleman sitting over there, he was about possibly five or six yards from us. He was at his desk.

By Mr. Roberts:

Q. Sukys, the far man?

A. Yes, sir. There was a young lady, a stenographer or book-keeper, she was right in there, too. Not very far. Possibly she heard it.

By Mr. Nelson:

Q. There is a railing at that place in front of the building, about as long as this railing, is there not? (Indicating bar of the court.)

A. Yes, sir.

Q. Was there anybody else there besides Miss Baltrunis?

A. No, I do not remember. I am positive the young lady was there, and this manager there.

Q. Mr. Sukys.

A. Yes, because I had been talking to them when Mr. McHenry called me over to talk with Mr. Stilson.

Q. Is it not true that the typewriter was lying out, open on the desk?

A. If I remember correctly I think it was, yes, sir.

Q. It was not locked up?

A. No, sir. I think the cover was—no, I don't remember whether there was any cover on it. I am not positive about that.

189 Redirect examination.

By Mr. Roberts:

Q. By the way, I forgot to ask you, were you present when this yellow circular, Government's Exhibit No. 27, was found there?

A. Yes. I think I found it. There was a bunch, about four of them, that I wound up, this one and two or three white ones. I do not know the exact nature of them now.

Q. You do not know whether they were in the same language as this or not?

A. No, sir.

Recross-examination.

By Mr. Nelson:

Q. When you say a bunch of them, referring to Government's Exhibit No. 27—

A. No, I do not mean a bunch of the same kind. It was stuck in a pigeon hole, and I think that is the same one.

Q. Along with other papers?

A. With other papers.

Q. You do not mean more than one like Government's Exhibit No. 27?

A. I cannot say that, because I cannot read Lithuanian.

Q. You found that one exhibit, Government's Exhibit No. 27, in the rear of the building, in the editor's room, did you not?

A. Now, I do not recall. I do not remember it. I think the bunch of papers I had reference to was in the front office.

Q. You have heard Mr. McHenry testify with regard to Government's Exhibit No. 27?

190 A. Yes.

Q. He said that was the only one found in the premises, and that was found back in the editor's room?

A. Yes. Well, now, I don't know about that. We had so many papers.

Q. You found it, didn't you?

A. I don't know that that was the one we took. We took this little bunch of papers, all bound up, you understand. Quite a number. I don't know whether they were the same kind as that or not.

Q. So that I am correct in saying this, you did not find Government's Exhibit No. 27 at all?

A. Possibly so. It may not be the same one.

Q. But this particular bunch of papers you were referring to, you think you found in the front part of the building?

A. Yes, this one I refer to was in the front part of the building.

Q. Whether Government's Exhibit No. 27 was found in the back of the building, it was not in that bundle you took?

A. It was not the same one, no, sir.

VINCENT RUDAITIS, heretofore sworn, recalled and examined and testified as follows:

By Mr. Roberts:

Q. I show the witness on the stand, who has been heretofore sworn, Government's Exhibit No. 28. Whose signature is that?

191 A. Mr. Sukys'.

Q. Mr. Sukys', the defendant here?

A. Yes, sir.

(No cross-examination.)

EDWARD W. ALEXANDER, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. What is your official position in the Philadelphia Post Office?

A. Chief mailing clerk.

Q. And as such mailing clerk have you custody of the statements on file under the Act of Congress showing the ownership and officership of newspapers?

A. I have.

Q. That have the mailing privilege through the Post Office?

A. I have, yes, sir.

Q. As such official at our request have you produced what we call Government's Exhibit No. 28 from your official files?

A. Yes, sir, that is the official.

Q. That is from the files of the Post Office Department?

A. Yes, sir.

Q. Under your charge?

A. Yes, sir.

(No cross-examination.)

192 MICHAEL MALCOLM SLIKAS, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. Where do you live?

A. 1327 South Wilton Street, Philadelphia.

Q. How old are you?

A. Twenty-nine.

Q. You are a member of the Philadelphia bar, are you not?

A. Yes sir.

Q. Prior to becoming a member of the Philadelphia bar where were you employed? In a law office?

A. I had been with Simpson, Brown and Williams.

Q. Simpson, Brown and Williams, lawyers of this city?

A. Yes sir.

Q. And you are now, I think, employed by the Emergency Fleet Corporation?

A. I have been, but I have relinquished that position.

Q. You have?

A. Yes sir.

Q. Were you born in this country?

A. Yes sir.

Q. Are your parents Lithuanians?

A. Yes sir.

Q. How long have you known the Lithuanian language?

A. Ever since I have been a boy.

Q. Ever since you have been a boy?

193 A. Yes.

Q. Have you done translating of Lithuanian into English and English into Lithuanian?

A. Yes sir.

Q. Have you had occasion to make public addresses in Lithuanian?

A. Yes sir.

Q. Where?

A. I used to speak at the Lithuanian National Hall at 928 Moyamensing Avenue and the Lithuanian Music Hall at Allegheny Avenue, and I have spoken outside of the city, I have been on a speaking tour for the Lithuanian National Council in Washington, Wilkes-Barre, Pittston, Duryea, Sugar Notch.

Q. You read Lithuanian?

A. Yes sir.

Q. You write it?

A. Yes sir.

Q. You talk it?

A. Yes sir.

Q. And you feel you are competent to render the real and actual sense of a Lithuanian composition into good English?

A. Yes sir.

Q. At our request have you translated certain articles?

A. Yes sir.

Q. Which we have laid before you?

A. Yes sir.

Q. First of all, at our request, did you cut a stencil, 194 thereby making a copy, of Government's Exhibit No. 1? I show you Government's Exhibit No. 32 and Government's Exhibit No. 1. Did you typewrite a stencil from which you made that on a stencil machine?

A. Yes.

Q. A mimeograph machine?

A. Yes sir.

Q. From a copy of Government's Exhibit No. 1, as near as you could?

A. Yes sir.

Q. On what typewriter did you make this?

A. On that typewriter there. That typewriter there.

Q. Then you mimeographed it?

A. Yes sir.

Q. From a wax or some sort of prepared stencil?

A. Yes sir.

Q. Did you make a translation of Government's Exhibit No. 1 at our request?

A. Yes sir.

Q. I show you Government's Exhibit No. 2. Is that your translation of Government's Exhibit No. 1?

A. Yes sir.

Q. And is that an accurate and correct translation, to the best of your ability?

A. Yes, it is.

Q. I also asked you to make translations of certain articles. 195 Just take that book. Turn to Government's Exhibit No. 3. That is a copy of Kova. There is an e-itorial, is there not, on page 4?

A. Yes sir.

Q. First column?

A. Yes sir.

Q. I show you Government's Exhibit No. 4. Is that a correct translation?

A. Yes sir.

Q. It is a correct translation?

A. Yes sir.

Mr. Nelson: Pardon me. What is the date of that?

Mr. Roberts: It is in the indictment. It is July 20th.

By Mr. Roberts:

Q. In order to shorten this, have you made correct translations of Government's Exhibits Nos. 5, 7, 9, 11, 13, 15 and 17, and are they here, bearing the next number in each case?

A. Yes.

Q. Government's Exhibit No. 6 being a translation of Government's Exhibit No. 5?

A. Yes sir.

Q. Do you want to look at Government's Exhibit No. 6?

A. Yes sir.

Q. Here it is.

A. Yes sir, that is right.

196 Q. And Government's Exhibit No. 8 being a translation of Government's No. 7?

A. Yes.

Q. And Government's No. 10 being a translation of Government's Exhibit No. 9?

A. Yes sir.

Q. And Government's Exhibit No. 12 being a translation of Government's Exhibit No. 11?

A. Yes sir.

Q. And Government's Exhibit No. 14 being a translation of Government's Exhibit No. 13?

A. Yes sir.

Q. And Government's Exhibit No. 16 being a translation of Government's Exhibit No. 15?

A. Yes sir.

Q. And Government's Exhibit No. 18 being a translation of Government's Exhibit No. 17?

A. Yes.

Q. And Government's Exhibit No. 20 being a translation of Government's Exhibit No. 19?

A. Yes.

Q. And Government's Exhibit No. 22 being a translation of Government's Exhibit No. 21?

A. Yes sir.

Q. Did you also translate Government's Exhibit No. 23, which is that gray sheet that has been testified to?

197 A. Yes sir.

Q. Is Government's Exhibit No. 24 a correct translation of that?

A. Yes sir.

Q. Did you also translate article, Government's Exhibit No. 25? Did you also translate Government's Exhibit No. 25, which is an article appearing in the Kova?

A. Yes, I did

Q. Is Government's Exhibit No. 26 a correct translation?

A. Yes sir.

Q. In each case where I have spoken of "Government's Exhibit," No. so-and-so, the thing you have translated is in the particular issue of Kova marked with lead pencil?

A. Yes sir.

Q. So as to identify the article you have translated. Is that right?

A. Yes sir.

Mr. Roberts: That is all. Do you want to postpone the cross-examination until tomorrow morning? Would you prefer to cross-examine in the morning?

Mr. Nelson: Yes, I would rather. In fact, I have no questions to ask him now. I have not any questions to ask him so far.

Mr. Roberts: Mr. Slikas will be here. If it occurs to you to ask him anything in the morning, I have no objection.

198 The Court: Gentlemen of the jury, you are relieved, then, until tomorrow morning at ten o'clock.

Court adjourned until Wednesday, October 2, 1918, at ten o'clock A. M.

199

Second Day.

UNITED STATES

VS.

STILSON and SUKYS.

Philadelphia, Pa.,

Wednesday, October 2, 1918—10 a. m.

Present: Parties as before noted.

J. FRANK ALLARD, having been duly sworn, was examined and testified as follows:

By Mr. Roberts:

Q. What is your full name?

A. J. Frank Allard.

Q. What is your address?

A. Brooklyn, New York.

Q. How long have you been employed in the typewriter business?

A. About twenty-eight years.

Q. And in what capacity and what is your present connection? Just give us the history of your connection with the industry.

A. My first employment with the typewriter business was in factories, the Franklyn Typewriter factory, the Remington, the Ford, the Columbia Barlock, and for a time in the Underwood Factory. For the past nineteen years I have been connected with the Underwood Typewriter Company as manager of the order department—while not entirely as manager of the order department—that position has been since 1904. Prior to that I had charge of the

200 mechanical departments and repair men through all the offices through the United States, traveling through Europe for them, and then I was auditor for about three years, and finally took my present position.

Q. That is, with the Underwood Typewriter Company?

A. Yes, with the Underwood Typewriter Company, in New York.

Q. In these connections, Mr. Allard, have you had anything to do with type and the manufacture of type for use in typewriters?

A. Since 1904, in my present position, all type matters connected with the Underwood Typewriter Company have been directly under my charge, and all the designs of type have to be submitted to me for approval, and a great many styles of type have been designed by myself, and I am thoroughly familiar with the process of manufacturing.

Q. Mr. Allard, have you ever made any study of typewriter types and the faces of the types for the purpose of identifying a particular make of typewriter and the individual typewriter from which a given writing was struck off?

A. I have, yes, for the past 15 to 18 years. I have made a particular study of it since 1910.

Q. Have you ever testified in court as an expert in identification of disputed typewritten documents?

A. I have, yes.

Q. Can you name some of the places where you have testified?

A. The People vs. Russell, at Herkimer, New York. People vs. Ziatti, in New York County; Automobile Supplies Manufacturing Company vs. E. A. Laboratories.

Q. Where was that?

201 A. And Fort vs. Carroll, Chattanooga, Tennessee, and recently in a will case in Chicago.

Q. You have been called over the country in various places to give expert opinions, and testify.

A. I have, yes, sir.

Q. Have you also testified in the United States courts in patent litigations concerning typewriter patents?

A. I have as a mechanical expert.

Q. As a mechanical expert?

A. Yes, sir.

Q. I show you Government's Exhibit No. 1, which is typewritten or mimeographed from a typewritten circular, and ask you if you have ever seen that document before?

A. I have, yes.

Q. When did you first see that, as far as you can remember?

A. I first saw it in the latter part of December in the office of the Department of Justice, Investigation Bureau, on this same floor in this building.

Q. Did you make a study of that document which you hold in your hand at that time in order to determine what type or make of typewriter it was made on?

A. I did, yes.

Q. And did you come to a conclusion with regard to it?

A. I did.

Q. Will you tell us what your conclusion was, and is?

A. I found that the exhibit was made by what is called the mimeographing process. That is, cutting a wax stencil on the
202 typewriter, and then the document was run off on a mimeograph or other duplicating machine, and that the style of typewriter which was used was a Remington machine.

Q. I show you Government's Exhibit No. 33 and ask you what that is?

A. That is one style of a wax stencil paper that is used for the purpose of making mimeograph copies.

Q. On that paper are the letters cut direct from the machine?

A. On this colored sheet.

Q. On that colored sheet?

A. Yes. The process of manufacturing is somewhat a secret process. I could not tell you just what the ingredients of the paper are, but that is the paper used.

Q. In making that stencil, Mr. Allard, is the ribbon left on the typewriter or is the ribbon taken off the typewriter so that the type will cut directly onto the stencil?

A. The ribbon is removed.

Q. The ribbon is removed?

A. Yes, sir.

Q. I show you Government's Exhibit No. 32, which it has been testified here was written on a typewriter by Mr. Slikas, and ask you if you have examined that?

A. I have, yes. I examined this at the same time that I first saw Exhibit No. 1. I have since examined both of these exhibits and have also studied same from photographs which were made about a
month ago.

203 Q. Have you had an opportunity at any time to examine the Remington typewriter, Model No. 10, serial No. 331215, which in this proceeding is called Government's Exhibit No. 29?

A. At the same time that I saw Exhibits 1 and 32 I also had the opportunity of examining this Remington typewriter, Model No. 10, Serial No. 331215.

Q. After making those examinations and comparisons, Mr. Allard, have you been able to arrive at any opinion as to whether the document, Exhibit No. 1, was or was not prepared on Remington typewriter, Model No. 10, Serial No. 331215?

A. I have, yes.

Q. You have arrived at a conclusion on that subject?

A. Yes.

Q. Will you please tell the court and jury your conclusion?

A. After going very carefully—studying and examining the typewriter, the faces of the type in the typewriter, and Exhibit No. 1, and Exhibit No. 32, I have arrived at the opinion that Exhibit No. 1 was prepared on the Remington Typewriter, Model No. 10, Serial No. 331215.

Q. The one that is here in court?

A. The one that is here in court.

Q. Is there any doubt about that conclusion at all in your mind?

A. I have no doubt in my own mind.

Q. No doubt?

A. No.

204 Q. Will you please tell the court and jury your reasons for forming that opinion?

A. For the purpose of explanation and for comparison, an easy mode of comparison, and only as a comparison, as my opinion is formed entirely on the original exhibit, I would like to use the photographs which were prepared by Mr. Horton in New York.

Mr. Roberts: May I have the jury look at these so that they can understand the witness' testimony about them, sir? These are the duplicate photographs.

The Court: Yes.

The Witness: The first double page in this port folio of photographs is a natural size photograph, which can be determined by the small scale which is placed at the side of the left hand page of Exhibit No. 1 and the right hand page of Exhibit No. 32. The second page is a 4-diameter enlargement of the upper left portion of both of these exhibits. The third page is a 4-diameter enlargement of the upper right hand portion of both documents. The fourth page is a 4-diameter enlargement of the lower left hand corner, and the last page, or fifth page, is a 4-diameter enlargement of the lower right hand portion of both documents.

By Br. Roberts:

Q. That is, the first photograph is a whole document, natural size?

A. Yes, natural size.

Q. The next four are enlarged pictures of the four quarters of the document?

205 A. Of the four quarters, yes, sir. You will notice in looking at Exhibit No. 1—

Q. On the first page?

A. —that the lower portion shows a distortion of the lines of writing. This is not caused by the typewriter in preparing the document, but if caused by the stencil paper, when it is placed on the mimeographing machine, creeping and distorting the lines of writing. This lower portion of the document is distorted to such an extent that you cannot tell very well regarding the alignment of the machine as compared to this document. Exhibit No. 32, which was prepared for the purposes of comparison,—the lines are perfectly straight. In this point in my testimony I do not refer to the lower part of the disputed document, but entirely to the upper part with the few exceptions which I will mention as I go on.

This typewriter is fitted with a number of duplicate characters. That is, the letter C, which is the ordinary letter C, which is used in writing English, and also has a small letter c, and a capital letter C, which has a small mark over it called a circumflex. In the particular language in which this document is written I do not know

as they term it a circumflex, but ordinarily that little mark is termed a circumflex.

There is also a small s and a capital S with that mark, as well as the ordinary small s and Capital S. There is also a small z and a capital Z, with the small mark.

In that document appear a number of letters with a small
206 hook at the bottom. This small hook is not a part of the character with which it is used. It is what is termed a solid key on the machine and is struck after the character itself is struck, and prints one space back of the position of the carriage, and shows as a part of the character which precedes it.

Now, this particular small hook is struck independent of every one of the small letters with which it appears, and one of the characteristics of this document as compared to the sample for comparison is that with all of these small letters with which it is used, it always strikes in the same position in both documents. That is, in the small u it points right into the lower portion of the u where the curve of the bottom of the letter shows the upright straight line of the small u. There are many of those. For instance, in the fourth line of the first paragraph, by comparing the sixth word, the last letter in the word, with the same word on the opposite sheet, you see this character always points right to that particular place in the small u. There are many of these small u's with that sign throughout the entire document.

With the small e, this character just touches the lower right hand portion of the small e. Now, to illustrate that, I want to refer to the third line on the bottom of the document, referring only to the characters, small e's with the hook. The one in the disputed document, the first e, does not show very plainly. The second e does show distinctly, and both e's show in the document for comparison, but this
207 small hook just touches the small e. Now, these two characters are struck independently. That is, the small e and this hook are struck independently of each other, and that would be a characteristic of the typewriter, that it should always strike in this position.

Now, in the fourth word, in the next to the last line, there is a capital U in which this small hook just touches the capital U. These characters are struck independently of each other. Also on that same line is a capital E in which this small hook just touches at the same place with the small e in both documents.

This is one of the characteristics which I have found to aid me to determine that this Exhibit 1 was written on this particular typewriter.

Now, some of the other characteristics are damages to the letters. In determining whether a certain typewriter was used there are several things which can be taken into consideration. One is a damaged character, that is, a portion of the character having been broken away by contact with some other character or something foreign to the machine.

Another characteristic which can be used is the slanting of the letters, whether or not the letter leans to the right or left.

Another characteristic is the alignment of a letter as compared with the other letters in the machine.

Now, in this machine I find one very badly damaged character.

There are others, but one in particular, and that is the small letter n. This can be seen more readily by referring to the second page, the enlarged, in the address. In the second word appear two small letter n's. You will notice that the lower right hand foot of the letter. The line which should be straight, on the line of writing, appears to lean upward, to the right. This is caused by the letter having been struck against some other letter in the machine, and by looking at the type in the machine you will see that the surface of the letter is turned up to the right. So that in printing it appears to slant distinctly up. Now, in mimeographing work letters do not always give their full impression or exactly the impression which they would when printing that paper through the ribbon for the reason that the wax sheet may vary in thickness or the stroke of the operator, and then again in inking the mimeographing machine, there may be a difference in the amount of ink which strikes a certain portion of the document, making it heavy at that point. Those two things I have had to take into consideration in examining.

There are some slight damages to the characters in this machine which do not always appear in the mimeographed work, but this small letter n distinctly appears all the way through. It is so badly damaged that it cannot help but appear in both the disputed document and in the sample for comparison. There are many of these. I think that it is not necessary to call attention to any particular one. I have not counted them, but I think it is almost the most used letter in the entire document. (Referring to the letter N.)

209 The small letter e, without the circumflex accent—

Q. There are two e's in this document?

A. Two e's.

Q. Two e's on this machine?

A. No, I am mistaken. The small letter e does not appear in duplicate. It is the ordinary small letter e. The small letter e is sometimes used with a character which is like a hyphen, a straight line, printed above it, but this is also on the silent key, the same as the small hook. In fact, it is on the same type face. The small e, the same small e, appears all through, whether it is used with this accent mark or whether it is used by itself. That character always prints light on the right hand side and heavy on the left hand side, and the capital letter e, which is on the same type face, does the same. That is a characteristic that runs through the entire document. The capital letter O, taken by itself, if you will refer to the last page in the enlargement—

Q. About the middle of the page there is one, isn't there? There are several the about the middle of the page?

A. There are several capital O's, one in the word spelled taikos, about the center of the page. It seems to be a heading.

Q. Yes?

A. That capital O invariably prints light at the upper right hand portion. There are several in the next to the last line, in the cap-

ital letters, in the word tuofaus, there is one, and one in the word "nieko." Then the word "tuofaus" appears again in the first line of that postscript, in capital letters.

Q. By the way, Mr. Allard, which of these two was inked the heaviest when it was stenciled?

A. The sample for comparison.

Q. The sample on the right hand side has very heavy ink?

A. That was heavier inked when used in the machine than the disputed document.

Q. You have taken that into consideration, then, in comparing?

A. I have, yes, sir. Now, the small letter j invariably leans to the right in comparison with its alignment with other letters. On the third page at the upper right hand corner is the word "jei," which distinctly shows this small j leaning to the right. Now, in the first page of the enlargement—

Q. That is the second page of the folder.

A. The second page in the book. In the second paragraph, fifth line—

Q. The word lejimus?

A. Lejimus. The first word in the line. Now, in the third paragraph, in the second line,—I think this word appears on the third page in the book, it is the fourth word. Isnandotojai, the small letter j there, shows distinctly leaning to the right, in both the disputed document and in the sample for comparison.

Q. It is a little higher up than the sample. I mean it is a little higher up on the page. It is printed higher up.

A. Now, the small letter y distinctly leans to the left and prints slightly higher than the other characters. On the second page of the enlargement,—on the third page—I think it is the one we were just looking at—the word vyrus at the upper right hand corner. That same letter y shows distinctly leaning to the left and higher than the letter r. Now on that same page, the eighth line from the bottom, the word n-u-z-u-d-y-t-u, the small letter y distinctly shows leaning to the left.

By the Court:

Q. Indicate that.

A. There, and here. It is in the 12th line on the opposite side of the page, from the bottom. The second word from the left. The small letter t always prints much lower than the other characters. On the same page that we are looking at, the 8th line from the top, the word i-s-t-a-t-y-w-a-m-s, both t's show distinctly much lower than the other characters in the word, and that also shows in the sample for comparison.

By Mr. Roberts:

Q. There is a t in the next word, too?

A. In the same line is the word m-e-t-a-m-i, which shows it very clearly. By careful examination of every word where the small letter t appears, it also appears in the same position. For instance,

on the very first line, the word p-a-s-u-k-t-u-o-s-i- the small t is much lower than any other character in the word.

Q. Let me ask you, if that small t were printed where it ought to be, would the top of the t be as high as the top of the k?

A. The cross bar of the t would be on a line with the upper right hand slanting line of the k. Now, there is another characteristic of alignment of this particular machine found in the 6th line from the bottom on this same page. The word spelled b-l-i-z-g-a-n, the next character is made by striking a small letter d and a small c, which has the circumflex accent, the small c super-imposing itself directly on the oval portion of the small d. Now in the sample for comparison, when that was written, the operator made a mistake, and did not bring that character out properly, and I have myself prepared here a typewritten sample made on this machine showing that that small c exactly super-imposes itself over the oval portion of the d. This would be a strong characteristic, because those two letters are struck independently of each other but in the same writing space. On another machine that small c might print in another position with that oval portion. This is one of the characteristics that was taken in connection with the other characteristics, which helped me to determine that this was the machine which was used.

Now, the small letter p always prints low and to the right. In this same photograph the word a-p-m-o-k-a, right nearly at the bottom of the page, would be the third line.

Q. The third line from the bottom?

A. From the bottom, and the 8th line on the opposite page—

Q. The same word?

A. In the sample for comparison.

Q. You say it always prints low and to the right?

A. It prints low and to the right. That is a very strong aligning characteristic of the small letter p.

Now, taking the small c's. There are two small c's, one with a circumflex accent and one without. The one with the circumflex accent does not always print the lower right hand portion of the letter. Sometimes it gives an impression of that lower right hand portion and other times it cuts it out almost entirely. In this same photograph, the word p-i-l-i-e-c-u-i, in the fifth line—

Q. In the fifth line from the top?

A. From the top.

Q. p-i-l-i-e-c-u-i?

A. It shows a damage to this particular small c with the circumflex accent, and this shows all through the writing. The small c that does not have this accent is a perfect c. So that in examining we have to take into consideration the difference between the two c's.

These are the strongest characteristics which I have found to connect the disputed document with the sample for comparison and with the machine. There are other characteristics which might be mentioned, but would take very close examination with a magnifying glass, and so forth, to determine positively.

Q. Before you go on any further, have you examined this with a glass to ascertain those very things?

A. I have, yes, sir. I have been over it with a fifteen-diameter magnifying glass several times. There is one characteristic which appears in the disputed document which does not appear in
214 the same position in the sample for comparison. That is the small z with a circumflex accent at the top, and in the disputed document this mostly prints exactly on a line with the other letters, or slightly below. In the sample for comparison it either prints on the line or slightly above. I find that that particular type bar carrying this particular type on the machine is a very loose type bar compared with the other type bars on the machine. It is what we call a variable character, that is, it will not always strike in the same place on the paper. The operator in cutting the sample for comparison undoubtedly used, as it is shown by the impression of the characters, a little heavier touch than the operator that cut the first, the document in dispute, and on that point I would call attention to the fact that the printing, taking the first page of the whole document, that the touch of the operator in cutting the stencil originally was very even, and the inking of the mimeograph was very even. It was what we would call a very good piece of mimeograph work, especially done on a comparatively worn machine, that is, a machine that had been in use for some time.

These characteristics, which I have gone into very closely, have led me firmly to the opinion that this particular Remington typewriter, Model No. 10, Serial No. 331215, was used in cutting the mimeographing stencil from which this disputed document was printed.

Q. I show you Government's Exhibit No. 27. Was that, in your opinion, taken from the same mimeograph stencil which
215 Government's Exhibit No. 1 was taken from?

A. I have previously examined this same exhibit, and my opinion with reference to the disputed document is also the same with reference to this Exhibit No. 27.

Q. That is, that was taken off the same stencil?

A. Taken from the same stencil.

Q. And made from the same machine?

A. Made from the same typewriter.

Cross-examined.

By Mr. Nelson:

Q. What is your local address in Brooklyn?

A. 101 Lincoln Place is my home address. At the present time I am living at a summer cottage at Freeport, Long Island.

Q. When you were called here by the Government you were asked to compare a certain mimeograph paper known as Government's Exhibit No. 1 with another typewritten paper known as Government's Exhibit No. 32?

A. Yes, sir.

Mr. Roberts: It was not a typewritten paper.

The Witness: A mimeograph paper.

Mr. Roberts: Exhibit No. 32 is a mimeograph paper.

Mr. Nelson: 23, then.

Mr. Roberts. No. They are both mimeographed. They are both made the same.

By Mr. Nelson:

Q. You were asked to compare two mimeographed or stenciled documents known as Exhibits Nos. 1 and 32. Is that right?

216 A. Yes, sir.

Q. And how were you told to compare them? With reference to similarities or with reference to differences?

A. I was asked if the two documents had been written on the same typewriter. That is, if the same typewriter had been used.

Q. Did you examine both documents with reference to differences and with reference to similarities?

A. I did, yes. I have already stated one of the differences which I found.

Q. And as a result of your examination you found several similarities and only one difference?

A. I found some differences which were accounted for by the discrepancy in the stencil paper and in the operation of the machine in cutting the stencil.

Q. And one you mentioned with reference to the letter z, which was, I think you called a loose type bar——

A. A loose type bar in the machine.

Q. Were there any other differences?

A. I did not find any, no, sir.

Q. Typewriters vary in the character of their impressions, with age, do they not, and use?

A. The character of the impressions would vary with age, yes.

Q. And the alignment would vary with age, too?

A. To a certain extent, yes.

Q. The impressions made by one typewriter would vary with the operator, too, would they not?

A. The operation of the machine, the operator using a heavier or a lighter touch, or a quicker, jerky touch, or an even touch, always shows, to a certain extent, in the work done.

Q. I believe you spoke of one character which was light, or that the impression was light on the top. Would that character print more evenly if the key had been struck harder?

A. No. It would not print any even. The character might show more of the top portion, but the lower portion of the letter would be correspondingly heavier.

Q. Would it be possible for an operator to strike a key so that in one instance part of the letter would show and in the other instance all of the letter would show?

A. Yes, if the letter itself did not strike, as we call it, on its feet, that is, on its feet with the impression made by the letter. If the letter appears heavy on one side and light on the other, then it is off

its feet. Now, the operator could strike that so light that the heavy portion would show and the other part not show.

By the Court:

Q. Might not inequalities in the surface of the paper produce that same result?

A. Inequalities in the surface of the cylinder of the typewriter might cause it. Paper generally has a pretty even surface, and it would not show in that, but a used cylinder, that is, where the cylinder had been punctured up by the punctuation marks, might cause inequalities in the printing.

By Mr. Nelson:

Q. Suppose I was an expert on typewriters, Mr. Allard, and
218 I was asked some questions about a typewriter, and suppose I was asked, "How do you know that one typewriter made two different impressions of a similar nature on two different sheets of paper," and I was to answer "by the peculiarities of the alignment." Would that, in your opinion, be a correct answer?

A. Please repeat that question.

(Question read.)

A. Not always, no, sir.

Q. But it would in some cases?

A. It would in some cases, yes. Whether a particular typewriter was used in writing two different documents cannot depend entirely upon alignment. In the first place, you have got to determine the make of typewriter that was used for either document, which is determined by the shapes of the characters, which are individual to each make of typewriter. After you determine it was the same kind of typewriter, then you have got to find whether or not the characteristics, of which there may be many or very few,—you determine that it was the same typewriter, then the alignment might enter into the determination of the fact that a certain character was struck in two different ways on two different papers.

Q. So that we understand each other, suppose it is this case I am being questioned about, and you have these two documents, similar documents, and you are asked if one machine, that is here in the court room made both of these documents, and suppose I am
219 answering the question, and I am asked that question, "How do you know that this same typewriter made both of these documents," and I was to answer "by the peculiarities of alignment." Would your answer still be the same?

A. My answer would still be the same, that it would be the peculiarities of the alignment taken in connection with the other characteristics found. If you made the answer that your determination was brought about entirely by the alignment, I would not consider it a proper answer.

Q. In other words, you would not consider it a complete answer?

A. No, sir.

Q. But, so far as it went, it would be true?

A. It would apply.

Q. And suppose I was asked, "Will you point out some of the peculiarities of alignment," and I answered, "In the first line, the peculiarity of alignment of the capital E on each side of the letter 'N.'"

A. In that particular case, on the right hand page, the sample for comparison, is an operative characteristic, the e and e, the n coming closer to the e. That is an operative characteristic.

Q. You mean that was done by the operator working the machine?

A. Yes. The e, n and e found in other places show that both those letters are in ordinary alignment to the right or left as compared to the other characteristics.

Q. Well, would you say that these peculiarities you pointed out show that these two documents were written by this machine?

A. That would not tend to show they were written by the same typewriter, if there was nothing else. If there was nothing else it might tend to show the opposite.

Q. It might be the opposite?

A. It might be the opposite, yes.

Q. It might show it was written by two different machines?

A. If there was nothing else, if there was just that one particular characteristic.

Q. Suppose I was asked the same question, to point out the peculiarities of alignment, and I answered "the capital R leans to the left and is light on the right hand side." Would you consider, from your examination of this document, that one of the peculiarities of similarity between these two documents, tending to show that this machine made both, was the fact that the capital R leans to the left, and is light on the right hand side?

A. Which particular capital R are you referring to?

Q. Generally. It is a general question and answer.

A. I would say that the capital R is generally in this document all show a tendency to print light at the lower right hand portion, in both the disputed document and in the document of comparison.

Q. Would you say it leans to the left in both documents?

A. I would not say it leans to the left. I think the character in both instances is about perpendicular. In the lower portion of the disputed document there is such a distortion of the lines that the characters are out of shape and appear to lean in different ways. That portion of the document I did not take into consideration at all as to alignment or the leaning character.

221 By Mr. Roberts:

Q. You mean you cannot properly compare them?

A. You cannot properly compare them.

By Mr. Nelson:

Q. So that, if I understand you rightly, you compare the upper portion rather than the lower portion?

A. For alignment and position of the line, yes.

Q. That is, the mimeograph sheet did not creep, I think you called it, in the upper portion?

A. Not enough. The creeping commences a little above the center of the page.

Q. Suppose again I was asked the question to point out some of the peculiarities of alignment and I answered, "The bottom of the small n in the second line is struck against another key or the type-bar, mashing it on that particular point, and is light on that particular side." Would you say that that was a point of similarity between these two documents?

A. The printing was light on the right hand side?

Q. Yes. "The bottom of the small n in this second line is struck against another key, or the type-bar, mashing it on that particular point, and is light, on that particular side."

A. That is one of the strong characteristics in this particular document and in the sample for comparison and is, I think, the strongest characteristic that shows that this machine was used. Where this small letter n is struck lightly, it shows distinctly leaning at the right. Where it is struck heavy it shows it is in the type.

222 The damage to the type is of such a character that a light blow might not show that foot at all on the right hand portion. In heavy blows it shows distinctly.

By Mr. Roberts:

Q. You have examined the particular type?

A. I have examined all the type of the machine.

By Mr. Nelson:

Q. And you examined the particular type of the machine for differences and for likenesses?

A. Yes, sir.

Q. Suppose I should answer, "The capital S is also light on the top." Would you call that a question of likeness, to prove that one machine did both documents, or a question of difference, to prove that two machines, one did one and one the other?

A. If the capital S appears light on the top in both documents, it is a characteristic that the same typewriter was used.

Q. But is it the case in these two documents, that the capital S appears light in both?

A. The capital S that does not have a circumflex——

Q. Can you find either sort of an S, if there are two, that appears light in both of these documents?

A. The capital S which does not have the circumflex appears light at the top, wherever it is not used. The one where the circumflex is used gives a fairly good impression all the way through.

Q. The circumflex is over the top of the S?

223 A. There are two different characters. There are two different characters on the machine. There is a capital S with the circumflex and one without.

Q. But with regard to the one with the circumflex, has that an accent mark on top of the S?

A. That is on the type itself, on the same type with the S.

Q. And on the upper portion of the S?

A. On the upper portion.

Q. And it is struck—

A. At the same time.

Q. By one impression?

A. Yes.

Q. It is on the same bar?

A. Yes, sir.

Q. So that with reference to the whole character, the part which you say is light, is what? Toward the center of the character?

A. I have not said any portion of the character was light.

Mr. Roberts: He said that would be very satisfactory.

By Mr. Roberts:

Q. That is, one prints evenly?

A. Yes.

Q. Then, it is the plain S that is light on the top?

A. Yes, sir.

Q. Suppose that I also said that the capital L is leaning to the left. Would you say that is a point of similarity between the two documents?

A. It is a point of similarity.

224 Q. From your examination of both of the documents, you as an expert in the typewriting line would say that the first mimeographed copy, the original, you might call it, was the work of one who did good typewriting?

A. Yes.

Q. That is, it would be the work rather of a professional typist than an amateur?

A. Well, yes, I would say it was the work of an operator who was thoroughly familiar with the language and with the keyboard of the machine and the operation of the machine. Also familiar with the operation of cutting mimeographing stencils.

Q. And probably the result of the work of some one who frequently did that sort of work?

A. Yes, sir.

Q. Would you say, Mr. Allard, that it was simply impossible to find another machine in the whole world that would make characters exactly like this first document is made?

A. I would, yes. I think that it is practically impossible.

Q. Practically impossible?

A. Yes. In fact, I would say it was impossible. This typewriter with the keyboard that it carries, with these special characters for writing this particular language, in my knowledge of the typewriter business, there are very very few of them, which would narrow the field down to these few machines which would possess these charac-

ters, which would make it, in my mind, impossible to find a machine with the same characteristics.

225 Q. Have you any idea how many machines of that sort there are in the United States?

A. I could not tell you definitely. I could say with reference to the Underwood Typewriter Company, that furnish this same sort of a keyboard, I don't believe there are twenty-five of them.

Q. But they do not have the same type as this, the Remington type, do they?

A. Oh, no. The shapes of the characters are entirely different.

Q. But you cannot answer with regard to the Remington?

A. No.

Q. And from what you do know, you imagine the number is small?

A. I would say the number is small.

Q. The Remington might have fifty in use throughout the United States, or one hundred?

A. It might, yes, sir.

Q. If I understand you correctly, from your knowledge of the typewriter business and the operation of typewriters, you would say it was improbable that two different machines were used to make these two documents, that it was impossible?

A. I would, yes, sir.

Q. Does no other machine use type similar to the Remington Typewriter?

A. The Remington Typewriter has its own distinct characteristics in the faces of the type. To my knowledge, there are no machines that use that same type face.

223 Q. You are acquainted with every style of type of every typewriter in this country?

A. More or less, yes. Some of them I am very well acquainted with.

Q. But you, then, could not say positively that there was no other typewriter in this country that used the style of type like the Remington?

A. I would say positively there is no other.

Q. No other in this country. Are you acquainted with the makes of various foreign machines?

A. Many of them, yes, sir.

Q. Are you acquainted with all of them in the United States?

A. I have studied some fourteen of them.

Q. Fourteen?

A. Yes.

Q. Do you know how many different types of foreign machines there are?

A. I could not enumerate them offhand, no. I know many of them.

Q. Are there twenty or thirty?

A. Less than twenty.

Q. Less than twenty?

A. Yes.

Q. But more than fourteen?

A. Taking all the countries, I would say there are more than fourteen.

Q. Then, as I understand your answer, it will be the same as to a similar question, that it is improbable that another machine, either of domestic or foreign manufacture, would have the
227 same type as the Remington, or you would say it was impossible?

A. I would, because I know of my knowledge that no other make of typewriter has the same type characteristics or the same type face.

Q. At the same time, you cannot really say that, that there is absolutely no other, because there are some machines you have never seen?

A. Do I understand you to say that there are some machines having the same type face?

Q. No.

By Mr. Roberts:

Q. He says there are some you have not seen. There are some machines in the world you have not seen?

A. I do not think there are more than three typewriters made in either Europe or the United States that I have not examined the type faces of.

By Mr. Nelson:

Q. That is what I say. As an expert, you have seen the majority of the different kinds of types and makes of typewriters, and you would say that it is impossible that there should be any type of that sort?

A. I do, yes.

Q. That is, in your opinion as an expert, but you cannot say so positively, as a matter of fact, because you admit there are some two or three you have not seen. Is that your answer?

A. Yes.

228 Redirect examination.

By Mr. Roberts:

Q. Mr. Allard, when you looked at this sample first, had you seen the machine?

A. When I compared the Exhibit No. 1 and Exhibit No. 32 with each other I had not examined the type faces of the typewriter.

Q. I want to ask you, when you examined Exhibit No. 1, were you able to call off the type faces that were out of the ordinary without looking at the machine at all?

A. When I made this examination a young man, who is a traveling repair man for the Underwood Typewriter Company, was sitting at the typewriter, and as I called off the damages to the type, he

examined the type faces and verified my findings from the examination of the two documents.

Q. Without your having seen the type at all at that time?

A. Without my having seen the type.

Q. Then, you afterwards examined the type themselves to check them up?

A. I did, yes, sir.

Recross-examination.

By Mr. Nelson:

Q. I have one more question to ask you, Mr. Allard. If you were told that another expert had given the answers which I have put to you, hypothetically, and that he said that the peculiar alignment of the capital E on each side of the letter N was a similarity, 229 to prove that the same machine did this work, and he also said that the capital R leaned to the left, both of which things I believe you denied in my cross examination, would you say that the other expert was mistaken?

A. Please repeat that.

(Question repeated.)

A. I do not think that I denied either of those things. You called attention to the capital E in connection with the capital N, calling attention to the difference between the disputed document, the alignment of the disputed document and the alignment in the sample for comparison. I stated that the one in the sample for comparison was an operative characteristic, and would tend to show that the same typewriter was not used, if there were not other things to be taken into consideration with it. With reference to the capital R, in my opinion, it stands upright. Whatever any other expert says with reference to a document does not change my opinion in any way. I form my own opinions separate from anybody else.

Q. I believe that. That is the way I understood you to have answered. The jury heard the answers. That is all, thank you.

Mr. Roberts: I would like to have the paper from which the witness read, where he said he had made some d's, with some figures over them marked as "Government's Exhibit No. 34."

(Paper marked, "Government's Exhibit No. 34, T. R. P.")

230 ROY C. McHENRY, heretofore sworn, recalled.

By Mr. Roberts:

Q. Will you just describe, please, where this paper was published, as you went into it. In the first place, I want particularly to identify the places there where Stilson and Sukys had their offices, when you went in?

A. The building is on the east side of North 6th Street and faces west, and it has a large window there like any store has.

Q. A regular store front?

A. A regular store front, but the door is not at the front. It goes in on an angle and opens, and you turn to your left on entering the building.

Q. And it faces west? The building faces west?

A. The building faces west.

Q. I would go in this way (illustrating).

A. Yes, sir.

Q. And I would turn to my left as I entered the door?

A. Yes, turning north.

Q. Turning north?

A. Yes.

Q. What do I do when I turn north?

A. I don't know how the arrangement is at present.

Q. When you were there.

A. When I went in there Mr. Stilson's desk and a little railing was the first place.

Q. That would be, then, in the northwest corner of the building?

A. Yes.

Q. The northwest corner of the room?

231 A. Yes.

Q. And that was railed off, you say?

A. Railed off.

Q. Anything else there in that railed space?

A. There was Mr. Stilson's desk, a typewriter desk.

Q. A typewriter desk?

A. Yes.

Q. Where was this typewriter in question?

A. It was in a typewriter desk, and the typewriter desk was closed.

Q. In other words, the typewriter desk was one of those desks where you have to lift up the top to expose the typewriter?

A. Yes, sir.

Q. A flat desk?

A. A flat desk with a top on it.

Q. What else was in the other compartment?

A. In back of that was a set of steel filing cases. On the other side were the steel filing cases, and also standing up on a table, or something, I don't recall just what, was the mimeographic machine.

Q. That was in that compartment?

A. Yes, sir.

Q. As you go on into the building, below that, whose place did you come to next?

A. Mr. Sukys' place.

Q. And what was in there?

A. His desk, and that was railed.

232 Q. A typewriter?

A. No, sir, no typewriter.

Q. Then, when you go on back, what did you come to next?

A. On the north side of the building are high book cases, and those are filled with pamphlets and other things, and on the other side, as I recall it, there was a printing press, or this typewriting machine. I won't say positively which.

Q. A typewriting machine?

A. I don't mean that. I mean a linotype machine.

Q. A type setting machine?

A. One or two.

Q. In the center part?

A. Yes, that is in the center part.

Q. There was machinery there?

A. Yes, sir. The hallway goes up on the outside of the room, and it is walled off there by a partition, and back of that there is an L of a room which goes to the south.

Q. And back of that back part?

A. Back in there is a linotype machine, and on the northwest corner—I have a compass here.

Q. This is north (illustrating).

A. Yes. The northeast corner was the room of the editors. That is, in the back, and about opposite the linotype machine in the rear.

Cross-examined.

By Mr. Nelson:

233 Q. You have forgotten to mention Miss Baltrunis' desk on the way back?

A. She had a little desk in back there.

Q. From Stilton's to the editors'?

A. Yes. She was not between there when I was there.

Q. It was not there?

A. No, sir. She was in back.

Q. But she had a desk there?

A. My recollection is it was back beside Mr. Sukys, between him and the editors' room.

Q. Yes, but I think you forgot to mention her.

A. Yes. I did not mention her. It was a small desk, and it was not occupied. I don't know whose it was.

Q. There was a desk there?

A. She was in the room. It was a little desk.

VINCENT RUDAITS, heretofore sworn, recalled.

(Examined through Michael Malcom Slikas, Interpreter.)

By Mr. Roberts:

Q. You mentioned in your testimony yesterday a man by the name of Baltrucitis?

A. Yes.

Q. Where does he live?

A. Pittsburgh.

Q. How long has he lived in Pittsburgh, to your knowledge?

A. I could not tell you how many years.

Q. How often did he come to the office of the Kova?

A. Last fall he came once to the office.

234 Q. Last fall he came once to the office?

A. Yes.

Q. How long did he stay?

A. He stayed here about a week's time, it seems.

Q. Was that after the first of September?

A. I don't actually remember.

Q. But it was in the autumn?

A. Yes.

Q. When was he there prior to that visit?

A. I don't know. I did not see him.

Q. Before that you had never seen him there?

A. The first time I saw him was last year.

(No cross-examination.)

Mr. Roberts: I offer in evidence Government's Exhibit No. 28, which is a statement over Mr. Sukys' signature, and has been identified as having been produced from the files of the Post Office Department.

Mr. Nelson: No objection.

Mr. Roberts: I would like to read that to the jury at this time.

(Government's Exhibit No. 28 read to the jury.)

Mr. Roberts: I also offer in evidence Government's Exhibit No. 1, being the pamphlet that has been shown to several of the witnesses.

I also offer in evidence Government's Exhibit No. 32, simply for the purpose of comparison, it having been a standard, offered
235 as a standard, for comparison.

I also offer in evidence Government's Exhibit No. 27, which is a yellow sheet, which has been testified to have been made from the same stencil as Government's Exhibit No. 1, and the Lithuanian matter endorsed on it is substantially as follows:

"This was distributed at our place one night. Fraternally, J. A. Tusan, 18 Ames Street."

That being found in the files of the paper.

Mr. Nelson: I object to the introduction of this exhibit, No. 27, on the ground, first, that it is a lefthanded way of making a defendant testify against himself, looking at it from the very best point of view of the Government, and secondly I object to it because the Government has in no way connected either one of these defendants with that piece of paper. It might just as well have been found on the street or in another house. The testimony shows that it was found in the editors' room in a pigeon hole in the back of this building at the other end as far physically as it could be away from where Stilson and Sukys were, and thirdly I object to the introduction of this piece of paper as against these defendants because it shows on its face that it is a paper which was sent to somebody, presumably from the Government's evidence, to one of these editors, Vidikas or Stalioratis.

The Court: I will overrule the objection and give the defendants an exception. I will overrule it on the first ground. I see no reason to give the reasons for the ruling. I will overrule it on the

236 second ground because the United States may prove the publication. The question of whether or not the defendants have been connected with it by the evidence is a matter for the determination of the jury. I will overrule it on the third ground for reasons which I do not think it is necessary to state on the record.

(Objection overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the court.)

Mr. Roberts: I also offer in evidence Government's Exhibits Nos. 3, 5, 7, 9, 11, 13, 15, 17, 19 and 21, being the articles mentioned in the Indictment, making the offer, however, of the entire paper in which the article appears, and calling attention to the article in each case. Unless Mr. Nelson desires it, for the purpose of certainty, I will not take the court's time by mentioning the date of each of these papers, as they are all bound in a bound folder running serially and consecutively, and the dates are charged in the indictment, so that he will not be at a disadvantage in knowing which papers are offered.

Mr. Nelson: I object to that, sir. First on the same ground as I made the objection just immediately previously, that this is a left-handed way on the part of the Government to cause a defendant to testify against himself, namely, by means of a search warrant, seizing everything that they can find in the place, and subsequently using it against the defendants, or endeavoring to use it against the defendants. Secondly, I object to it, because, in my opinion, sir, the

237 Government has not connected either one of these defendants with Kova. Their own witness, Rudaitis, who was employed there, has testified, and they are bound by his testimony, that Stilson was secretary of the Federation, that Sukys was manager, he said, of the Federation, and he did say on one occasion of Kova—he was not clear about that. He testified that neither one of these men had the right to hire or discharge either one of the editors, that they were entirely separate and distinct from the editors, that they had nothing to do with the editorial or news policy of the paper Kova, and this same witness Rudaitis testified further that this Federation, by various processes, either elected or appointed these different individuals, and that these different individuals were individually responsible to the branch of the Federation which either elected or appointed them. To be perfectly fair with the Government, on this point of my objection, the only evidence I can see to connect up these defendants with Kova is the document which was put in evidence here and which was not objected to, from the Post Office, which sets forth the names of the officers of Kova. That is the only thing that the Government has shown really connecting these two defendants.

The Court: Let me inquire, Mr. Nelson. The copies, which were the production of these machines, as to which we have evidence,—were those articles reproduced in the paper, or were they pamphlets merely?

Mr. Roberts: Do you mean Government's Exhibit No. 1, which is the ante-recruiting thing? The mimeographed thing?

238 The Court: I do not know what it is.

Mr. Roberts: We complain of the pamphlet.

The Court: There is evidence here as to certain published manuscripts.

Mr. Roberts: That is the only one, sir, that we complain of, and that is the first overt act alleged in the indictment.

The Court: There were two. One I understand is innocuous, and the other is complained of.

Mr. Roberts: Yes.

The Court: What I want to know is whether those articles, or either of them—I assume you will ask the jury to find they are the product of these particular machines—whether or not they appeared in the newspapers.

Mr. Roberts: No, sir, they did not appear in the newspapers.

The Court: I understand they did not.

Mr. Nelson: That is the basis of my objection, sir.

The Court: I will overrule it upon the first ground. I will overrule it also upon the second ground. The record may show that the question of the connection of the defendants, or either of them, with the paper is a question to be determined by the jury. It is not necessary that there be evidence of authorship if the gravamen of the offense, so far as the paper is concerned, is in the publication.

(Exception noted for the defendants, individually and jointly, by direction of the court.)

239 Mr. Roberts: I offer in evidence Government's Exhibits Nos. 4, 6, 8, 10, 12, 14, 16, 18, 20 and 22, being sworn to or testified to be translations of the Exhibits last offered in evidence.

Mr. Nelson: I object to those translations being put in evidence, sir, because they are translations of certain articles appearing in certain papers which I have already objected to.

(Objection overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the court.)

Mr. Roberts: I also offer in evidence one of the issues of Kova, of June 1, 1917, which has been identified here, but has not yet been offered separately, calling attention to two articles signed by J. V. Stilson, which articles are not copied as overt acts, or charged as such, in the indictment, which articles appear on page two of said issue, being signed by J. V. Stilson, L. S. F. Seki, Vert."

The Court: Does that mean the official designation?

Mr. Roberts: Yes. That means the Lithuanian Socialist Federation, Secretary Translator.

I offer these articles in evidence to show motive, intent and purpose and connection with the purposes of this Federation, and to be taken in connection with an offer immediately to follow, of this entire file of the paper, to show two things, first, that this paper,

240 as has been testified to orally, and by its own admission, was the official organ of this association of which Stilson has been testified to have been the secretary.

Mr. Nelson: I object to Exhibit No. 25, sir—I object to the introduction of it in evidence, because it did not appear in the indictment, and the defendants had no knowledge that it might be used in evidence, and, therefore, they are more or less unprepared to meet it.

(Objection overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the court.)

Mr. Roberts: I also offer in evidence Government's Exhibit No. 26, which was yesterday identified by Mr. Slikas as a correct translation of the article known as Government's Exhibit No. 25.

(Objected to.)

(Objection overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the court.)

Mr. Roberts: I also offer in evidence the file which has been identified as the file of the newspaper Kova, starting with the issue of May 25, and running through to the date of the latest article which is offered as an Exhibit, being October 19, 1907, restricting and limiting that offer, however, so as not to put the contents of the issues in evidence, unless the defendants desire to so do, for any purpose, except for the purpose of showing the following, taken from the first

page, at the heading:

241 "The Lithuanian weekly 'Kova,' published every Friday by the Lithuanian Federation Socialist Party. Yearly subscription, in all parts of the world, \$2.00. Advertising rates on application. All communications should be addressed to K. Vidikas, Editor. J. Sukys, Manager."

Then again, on a new line:

"Kova. 229 North 6th Street, Philadelphia, Pa."

My offer, except, as I have said, for any use the defendants may care to put the issue to, being limited to that only, and no other matter, in these issues, except the issue in which I have identified the articles, and had them translated, being offered in evidence as substantive matter in this case. I have limited my offer, and I tried to make it clear. I do not know whether I have or not.

Mr. Nelson: I object to the introduction of this for the reasons already stated.

(Objection overruled.)

(Exception noted for the defendants, individually and jointly, by direction of the court.)

Mr. Roberts: I also offer in evidence Government's Exhibit No. 23, which has been testified to, being mimeograph matter, on what has been called a gray paper, as one of the matters in the chain of identification, and as attempting to prove the source of the mimeographed

article known as Government's Exhibit No. 1, which is complained of in the indictment, and not for any independent purpose.

242 I offer in connection with that Government's Exhibit No. 24, which is a translation, it being nothing that the Government complains of, but it being thought fair, if the article is offered, that no improper inference should be drawn from the offer, and that it is a proper translation.

Mr. Nelson: No objection.

Mr. Roberts: I offer in evidence also Government's Exhibit No. 30, which is ten duplicates of photographs which have been testified to, as having been made from Government's Exhibit No. 1 and Government's Exhibit No. 32.

Mr. Nelson: That is objected to because they are reproductions of papers which have already been objected to.

Mr. Roberts: I will limit the offer. This is not offered as substantive evidence, but merely offered as admissible in aiding the jury in testing the validity of the expert testimony that has been given.

Mr. Nelson: Objection withdrawn.

The Court: They may be used for that purpose and are admitted for that purpose only.

Mr. Roberts: I also offer in evidence Government's Exhibit No. 33, which has been identified as one variety of the kind of wax paper that is used in making a stencil, as affording some help to the jury in testing the validity of that same witness in testifying with regard to the case, but not, of course, as any substantive evidence in the case.

I also offer in evidence Exhibit No. 34, which is a sample
243 made by the witness Allard, and testified to, as showing the impingement of the small d and the small c and the little figure above the same.

Mr. Nelson: I object to the introduction of that.

Mr. Roberts: Merely for the purpose of testing the accuracy of this testimony and enabling the jury in determining what weight shall be given to it.

Mr. Nelson: Objection withdrawn.

Mr. Roberts: I offer in evidence also Government's Exhibit No. 29, being a Remington Typewriter, Model No. 10, Serial No. 331215, which has been testified to as having been taken from the office of the paper Kova and identified by Mr. McHenry.

Mr. Nelson: No objection.

Mr. Roberts: I also offer in evidence Government's Exhibit No. 31, which is a mimeograph machine, and cover, also identified in this case.

Mr. Nelson: No objection.

Government rests.

244 Mr. Nelson: If your Honor please, as a matter of form I am going to make a motion that your Honor dismiss the charges against both the defendants and take the case from the Jury, on the ground, as I have already indicated in objections I have made, that the Government has failed to connect either one of these de-

defendants with either the typewritten circular, mimeographed circular, or with the articles in Kova. I anticipate from what your Honor has already ruled how your Honor will decide the motion, but, as I say, I make that motion now as a pure formality, so as to have your Honor's ruling.

Motion denied. Exception noted for defendants by direction of the Court.

Defendants' Evidence.

Mr. Nelson opened to the Jury in behalf of the defendants.

JOSEPH V. STILSON, having been duly sworn, was examined and testified as follows:

By Mr. Nelson:

Q. Your name is Joseph Stilson?

A. Yes, sir.

Q. You live where?

A. At the present time?

Q. Yes.

A. 2849 South Union Avenue, Chicago, Ill.

245 Q. You live in Chicago at the present time?

A. Yes, sir.

Q. Are you connected with the Lithuanian Socialist Federation?

A. Yes, sir.

Q. In what capacity?

A. I am translator-secretary.

Q. What is the nature of your office?

A. That is, of my position?

Q. Yes; what are your duties?

A. As the secretary I usually communicate with the branches; I receive initial measures for referendums, send out blanks, keep track of membership dues paid, and as a translator I receive all communications from the Socialist Party national office and from State offices, and those intended to publish for general information of the membership, I simply translate from English into Lithuanian and publish them. While we had the Kova I published them in the Kova. At the present time when we have no paper, I send them through the mail, when there is any matter of that sort, and when there is anything decided within the federation of interest to the party, to the Socialist Party, simply translate this into English and then send it to the Socialist Party. In the shortest terms, I serve as a medium between the Socialist Party National Office and the State organizations and the Lithuanian Socialist Federation. That is my position.

246 Q. Have you any official connection with Kova, one of the organs of the Socialist Federation?

A. None at all.

Q. Did you have, as an official of the Federation, any translating to do for Kova?

A. Not for Kova.

Q. Did you ever use Kova in any way, in connection with your office, in the sending out of your official communications?

A. I did. I published in Kova, as an official organ which was received by every member, mostly, all the matter that was of interest to the membership in general, and this was printed under the special heading, "The Affairs of the Lithuanian Federation," or "The Affairs of the Socialist Party," and the other matter, which was not of interest in general to membership, I have sent through the mail, or if it was something, for instance, as referendum blanks which affect the branches themselves, not the whole membership, I have sent it through the mail.

Q. Whom did you give your copy to when you wanted it published in Kova?

A. I handed it to the editor.

Q. How do you secure your position as translator-secretary?

A. I am elected by a referendum vote of the membership.

Q. The membership of what, of one branch?

A. Of the Lithuanian Socialist Federation; no, of all branches.

Q. How many branches have you?

217 A. About 150. I am not quite sure at this time, but about that.

Q. And how many members have you?

A. We have now about 4400, I think at the present time.

Q. Were you born in this country?

A. No, sir.

Q. Where were you born?

A. I was born in Lithuania. It is a part of Russia, used to be.

Q. Is that language the same or different from the Russian language?

A. Oh, the Russian language is entirely different from the Lithuanian language.

Q. Did you have anything to do with the hiring or discharging of the editors mentioned in this trial?

A. None at all.

Q. How did they secure their positions?

A. The editor-in-chief was also elected by a referendum vote of the membership of the Lithuanian Socialist Federation, and the assistant editor was appointed by the Executive Committee, with the consent of the Committee on Literature.

Q. Who had charge of Kova with regard to its editorial and its news policy?

A. Well, theoretically it was charged by conventions, by certain resolutions passed.

Q. Resolutions passed by whom?

248 A. By conventions of the Lithuanian Socialist Federation of America; but practically the paper was controlled, that is, the policies and the articles that appeared in the paper, practically was controlled by the editors themselves.

Q. When were conventions held?

A. The conventions was held once within two years, and sometimes there were special conventions, and the place of the convention was decided also by a referendum vote of the membership of the Lithuanian Federation Socialist Party.

Q. In between conventions who else beside the editors were responsible, or had the authority to determine the editorial and news policy of Kova?

A. The news policy, the Committee on Literature had something to say, but practically the editors was the sole bosses of the things that appeared in Kova.

Q. Where did the Literature Committee come from?

A. They are also elected by a referendum vote of the membership of the Lithuanian Socialist Federation.

Q. Where did they come from; from one city or several cities?

A. No, they are scattered all over the United States.

Q. How often did they meet?

A. I do not think they ever held a meeting. Whenever they have to do some business, they do it through correspondence.

Q. In the early part of December, it has been testified, the Government agents went to the printing plant of the Lithuanian Federation with a search warrant and seized your files and papers and made arrests. Whom did they arrest?

A. They arrested me.

249 Q. Who else?

A. They simply took it to the Post Office all the working men there, practically all I think, but they had a warrant for me only, the way I understood.

Q. Whom did they take to the Post Office; you and who else?

A. They took me; they took Mr. Sukys; they took Mr. Rudaitis; they took Mr. Jasulevicius.

Q. They took four or five people; is that right?

A. I think they took all of us, but I cannot remember exactly if it was all of us; but about four or five or so.

Q. Did the warrant call for the arrest of anyone else besides those you have mentioned?

A. The way I understood, it was called for the arrest of me only.

Mr. Roberts: That is right. That was the only warrant put out at that time except the search warrant.

By Mr. Nelson:

Q. Did they take all of the people who were in the place when the officers came there?

A. I could not say. I could not say, because there were several bystanders in there, but they took me first out and Sukys I think, and then the others.

Q. Were the editors there when the Government officials came there?

A. They were there when the officials came in.

Q. Did they take them?

A. No, sir.

250 Q. What became of the editors?

A. At the time the search was made, the way I understood they disappeared

Q. No, just what you know yourself?

A. Because Mr. McHenry came to me and he was standing about six feet from me, while some other gentleman was asking for the editors, and he says "Where is the editors?" and I was in the front office all the time standing with one or the other Federal official, so I says "I don't know, you know better."

Q. To shorten it up, did they get the editors?

A. No, they did not.

Q. Do you know what became of the editors?

A. I do not know.

Mr. Roberts: He did not see them going over the transom, I guess. That is what became of them, we all know. They went over the transom in the toilet room.

By Mr. Nelson:

Q. It has been testified by Mr. McHenry that you denied your identity and said that you were out to lunch when you were asked by Mr. McHenry where Mr. Stilson was. Is that so?

A. It is not true.

Q. What did happen?

A. I was in the front office at my desk and I was preparing monthly statements to be sent out, and I did not want to be disturbed, and I told Miss Boltrunas, I says "If anyone comes in, I am going to move to my table"—there is a little table in the printing shop
251 there in the back room—and I says "I am not in until 3 o'clock," and when the Federal agents came in, Mr. McHenry did not ask me, "Where is Stilson?" but he asked Miss Boltrunas "Where is Stilson?" and she replied the same thing, that "he is out to lunch," and he asked her "How soon will he be back?" and she says "3 o'clock." Then some of the agents went — of course, I could not recognize all of them, because they were the first time seen by me.

Q. Just tell what happened?

A. Some of them went back to the room, and then one took out a piece of paper and he said that he has a warrant for Stilson. I says "Warrant for Stilson?" and I went to the back room where the other agents was and Mr. McHenry was there, and I told this gentleman with the warrant, I says "I am Mr. Stilson." McHenry came along and he says "You are not Mr. Stilson," he says "Mr. Stilson is with a beard and whiskers." I says "If that is so, I do not know, maybe there is another Stilson, but," I says, "in reference to me there is but one Stilson in this house and it is myself." So he says "If you try to imitate someone else, we will hold you responsible for Stilson." I says "I am not trying to imitate myself. I am the fellow you look for."

Q. In other words, you did not deny your identity and you did not try to run away?

A. I did not.

252 Q. Mr. McHenry yesterday testified that you said that you were the only one used that typewriter that was found in the plant of the Socialist Federation. Tell the Court and Jury what you remember of that conversation?

A. I think I remember correctly the conversation I had with Mr. McHenry. He asked me who uses this typewriter. I says "While I am in the office at the desk, no one uses it but myself." He did not ask me whether anyone used it when I got off my desk, while I was away from the desk. He did not ask me any questions of that sort. Then finally, when we got to the Post Office building on that day, I asked for a right to call my attorney, and Mr. McHenry told me, he says "You just wait a minute and I will get you a 'phone." He went out and stayed about a couple of minutes and came back. He says "Now come here," and I went with him into another room, right here in the Post Office building.

Q. Were you two alone?

A. I was alone with Mr. McHenry, and we found there another gentleman, I do not know his name. Mr. McHenry pulled out a certain leaflet, which he showed me in the office at the time the search was made in the offices of Kova, and he says "Now here——

By Mr. Roberts:

Q. He pulled out a paper that he had shown you at the office?

A. Yes.

Q. You did not tell us that.

253 A. Perhaps I forgot it, but he showed me the paper in the office and he asked me whether I wrote that or not. He says "Now here. We know that you wrote this leaflet." I says "Well, maybe you think so, but," I says, "I have no knowledge about it whatever." "Now," he says, "if you did not write it, who wrote it?" I says "In fact, I don't know anything about this leaflet, because I saw it first in your hands in the office of Kova when you came in and showed it to me."

By Mr. Nelson:

Q. Is that the leaflet they got in the back room, in the editors' room?

A. I do not know. I do not think so, because Mr. McHenry showed me a leaflet at the time when I told him——

Q. You do not know where it came from, the one he showed you?

A. No.

Q. Then what happened after he showed you that and you said you did not know?

A. Then I said it was not my leaflet, that I did not know anything about it. He went out.

Q. You said that you also said you did not know who did write it; then what?

A. I said I did not know who did write it. He went out and stayed for a few minutes, and the other gentleman went out and the other came in, and was going out and coming in, and Mr. McHenry returned and he says "Now here. I have questioned Miss Baltrunas," he says, "and you are a coward enough not to admit that you wrote it, but in fact she told me that you did."

254 So I says "Maybe she did, I don't know, but," I says, "I did not write the leaflet anyhow and I do not know anything about it." After that they brought me to the court, before Commissioner Mr. Long, and it happened so that one of the bystanders in Kova notified my attorney, so he appeared, otherwise I could not get a defense of any sort.

Q. They did not let you get in touch with your attorney over the telephone?

A. Yes. They brought me to the court, of course.

Q. This mimeographed circular that was shown you and is in evidence in this case now—

Mr. Nelson: That is Government Exhibit No. 1?

Mr. Roberts: That is Government Exhibit No. 1. That is the complained of one.

Mr. Nelson: That is the one that came from Wilkes-Barre?

Mr. Roberts: Right.

By Mr. Nelson:

Q. Did you write that?

A. I did not, sir.

Q. Did you mimeograph it?

A. I did not.

Q. Did you have anything to do with it?

A. I had nothing to do with it.

Q. Do you know who did write it or have anything to do with it?

255 A. I do not know.

Q. Do you know whether it was produced in the office of the Lithuanian Socialist Federation, on Sixth Street above Race?

A. I cannot say. I do not know.

Q. Did you ever tell anybody that you did write it?

A. No, sir, I have not, because I did not know anything about the leaflet.

Q. Did you ever tell anybody that you had anything to do with it?

A. No, sir.

Q. Did anybody else use that typewriter besides yourself?

A. Yes.

Q. Who?

A. I know that Mr. Vidikas used it; I know that Miss Boltrunas used it. That is about all I know that used it, practically.

Q. Keep your voice up. Is that all?

A. That is about all, I think.

Q. You know that Vidikas, the editor, used it, and Miss Boltrunas. Who is Miss Boltrunas?

A. Miss Boltrunas is the bookkeeper in the establishment there.

Q. Did you ever issue any orders to anybody that they were not to use that typewriter?

A. The typewriter belongs to the Lithuanian Socialist Federation.

By Mr. Roberts:

Q. The typewriter itself belongs to the Association?

256 A. Yes, and I had no power to issue orders forbidding the use of the typewriter, of that particular typewriter. There was but one typewriter in the office, but I needed it mostly because I send letters to branches. I used it mostly myself, but then it was used by Mr. Vidikas, the editor. He was making translation for the Post Office and making some notes and letters to the contributors and so on. Miss Boltrunas used it as a means of sending business letters and so on.

By Mr. Nelson:

Q. Who is Miss Boltrunas?

A. She is bookkeeper in the office of the Kova.

Q. What is Sukys' position?

A. Sukys is the business manager there.

Q. Who elects or appoints him?

A. Mr. Sukys is appointed by the Executive Committee of the Lithuanian Socialist Federation.

Q. And what is he appointed as?

A. As a business manager.

Q. Of what?

A. As a business manager of the plant there.

Q. What sort of work does that plant do?

A. Doing job printing, ordinary job printing, and publishes newspapers.

Q. Does it do work for the Lithuanian Federation?

A. Yes.

Q. Does it do work for private individuals?

A. Yes.

257 Q. Does it do work for private individuals who are not Lithuanians?

A. Yes.

Q. Does it do English job printing?

A. Yes.

Q. And Lithuanian job printing?

A. Yes.

Q. Has Mr. Sukys the right to discharge or hire the editors of Kova?

A. No, sir.

Q. What other papers does this printing plant publish besides Kova?

A. There was two monthlies.

Q. Two monthly papers?

A. Yes.

Q. Any others?

A. One is published by the Federation and the other is printed as merely job printing.

Q. It is job printing?

A. Yes, sir.

Q. Had Mr. Sukys the right to give any instructions or orders to the editors with regard to the editorial or news policy of the paper?

A. So far as I understand, none at all.

Q. Did you ever hear him give any orders to them?

A. I have not.

Q. How often were you in the office and when?

A. I am usually there every day, but at occasions I am out
258 in New York or somewhere else, and sometimes I go to see my folks in Hazleton, Pennsylvania.

Q. In connection with your duties as translator-secretary of the Lithuanian Federation, were you in the office every day?

A. No, sir, not every day.

Q. How frequently are you away from the office?

A. It is hard to say, but sometimes I was away for two or three days; sometimes I was in town, sometimes I was at home.

Q. Were you ever away for more than two or three days?

A. Oh, yes.

Q. What cities do you visit in the course of your official work as secretary-translator?

A. I was in Hazleton, I think, for about seven or eight days once. That is my home town.

Q. Do you recall, in the period between May 18th and December 7, 1917, whether or not you were away from that office any particular times?

A. I was away in Hazleton some time in the summer of last year, but I could not exactly say what date it was.

Q. Was it after May 18th?

A. Oh, it was after May 18th.

Q. And it was before December 7th or 9th?

A. Oh, it was in summer. It was in — June —

Q. Did you go to any other city outside of Hazleton?

A. Oh, yes, as I mentioned, I often go to New York.

Q. I mean between the dates mentioned, did you go to any
259 other city than Hazleton?

A. Well, I was in Elizabeth.

Q. Between May 18th and December 7th or 9th?

A. I was in Elizabeth, New Jersey.

Q. Can you tell on the average how often you were away?

A. On the average I am usually, as secretary, away from the office on the average of about five days a month.

Q. Certain translations have been put in evidence, and you were shown a copy of the translations in the indictment and you made certain marks to refresh your mind as to wherein you thought those translations were wrong. I hand you that indictment or paper. Will you tell the Court and Jury where you think the translations, which

I believe were made by the witness Mr. Slikas, were wrong. I think there were four mistakes you called my attention to.

Mr. Roberts: Did you find as many as four?

Mr. Nelson: Yes, four; that is, important ones. There were more but they were not so important.

A. Yes, there is one on page 7.

By Mr. Roberts:

Q. What article?

A. Dated August 10, 1917.

Mr. Nelson: The last paragraph of the eighth overt act.

The Witness: The mistake is where it says, on the last paragraph before No. 9, where it begins: "It is necessary to consider such complexities." In the original, as I compared it, it says "It is not
260 necessary."

Mr. Roberts: That is what we have, "It is not necessary to consider such complexities."

The Witness: "It is necessary," says in here.

Mr. Roberts: You have an old translation. That is not the translation in the indictment at all. In the inditement it says "It is not necessary to consider such complexities."

By Mr. Nelson:

Q. Now the second one, I believe, is in overt act No. 9.

A. It is on the same page, page 7, the last line on the page, the words "new branch."

Q. What is the whole title there?

A. It says "Brockton, Massachusetts, The New Branch Agitation."

Q. What should it be?

A. That new branch, it means those that were called to the army, the draftees, or in that sense.

By Mr. Roberts:

Q. Then it would be "Anti-Draft Agitation"?

A. It is not anti-draft.

Q. Draft agitation, then?

A. It is some sort of excitement among the draftees.

Mr. Roberts: All right, "Excitement amongst the Draftees." We will change it so, if that is fair.

The Witness: Something of that sort.

261 Mr. Roberts: I want to put it the way you say it ought to be. Please note that for purposes of reference I have noted on Government Exhibit No. 8 the witness's statement of what the exhibit should read, in lead pencil.

By Mr. Nelson:

Q. The third one that you called my attention to was, I believe overt act No. 1 under count 2, editorial headed "Concerning the Military Registration of June 5."

A. Yes, it is on page 19, beginning with the first word on the fourth line, beginning with the new sentence. It is the third word from the right side. It says "Some of the questions are understood to be unimportant to all as well as to us Socialists." The proper meaning of that—the original says that "mostly all of these questions will be understood by all, but as to us Socialists they are not important."

By Mr. Roberts:

Q. Wait a minute. "Some of these questions are understood to be unimportant to all as well as to Socialists." That is the way we have translated it?

A. Yes.

Q. How do you put it?

A. "Most of these questions are understood to all."

Q. Understood by all, you mean?

A. Or "by all, but they are not important to us Socialists."

Mr. Roberts: "But they are not important to us Socialists." All right. Note that I have written that in on Exhibit 20, please.

262 By Mr. Nelson:

Q. Now the fourth one that you called my attention to?

A. It is on page 20.

Q. That is page 20 in your copy?

A. Yes.

Q. Under the head "39 Arrested"?

A. Yes. Now the way it is translated by the Government's translator, it reads "39 persons were arrested at the Harlem mass meeting, which was organized for the purpose of fighting against compulsory service in the army." Now the mistake is that the translation shows that the meeting was arranged for the purpose of fighting against compulsory service.

By Mr. Roberts:

Q. "Meeting which was organized for the purpose of fighting against compulsory service?"

A. Yes. In the original, which I compared, it says that the meeting was organized by a league to fight the military service.

Q. Instead of "for the purpose," you would say "Organized by a league to fight compulsory service"?

A. Yes. There must be a certain league by that name.

Mr. Roberts: All right, we will put it that way. That I have noted on Exhibit 22.

By Mr. Nelson:

Q. Are you naturalized?

A. Yes, sir.

Q. When were you naturalized?

A. I was naturalized in 1915, I think some time in June.

263 Q. And how old are you?

A. I am 27 years of age now.

Q. Have you registered under the Selective Draft Act?

A. Yes, sir.

Q. Have you filled out your questionnaire?

A. Yes, sir.

Q. Are you married or single?

A. Married.

Q. Have you a family?

A. Yes, sir.

Q. What does your family consist of?

A. My wife and one baby.

Q. Are your parents living?

A. Yes, sir.

Q. Where do they live?

A. They live in Hazelton, Pennsylvania.

Q. How long have they been in this country?

A. My father is about 26 years and my mother is about 14 years, a little over 14.

Q. Now old were you when you came here?

A. I think I was 13 years of age.

Q. Are you a Socialist?

A. Now?

Q. Yes.

A. Yes, sir.

Q. Are you opposed to war in general?

264 A. As a Socialist, yes.

Q. I mean individually?

A. Well, I am opposed to all wars in general, that is it.

Q. Does your opposition to war go to the extent of making you disobey the laws of this country?

A. No, sir.

Q. Do you believe that the majority should rule in fixing the laws of this country?

A. I beg your pardon?

Q. Do you believe that the majority should control in fixing the laws of this country?

A. I think so, yes, sir.

Q. With regard to the exhibit of the Government from the Post Office authorities, fixing certain people as officers of Kova, of the publication known as Kova, will you explain to the Court and Jury how those names came into that report?

A. Those names came into that report, it is quite some time ago, I think. Generally the Federation is ruled by the Executive Committee, but when the new law came into effect requiring the publishers or managers of the newspapers to furnish them semi-annually with the statement showing the publisher, the editor, the manager of that particular paper, so as far as I remember, I think it was in 1915, the manager was not Mr. Sukys at that time, it was Mr. Jakstys. He took the report to the Post Office, saying that people who were officers of the Lithuanian Socialist Federation are the Execu-

265 tive Committee. That statement was returned to him with the requirement that he should write the names of the manager, the secretary and the president, but I understood it was not in the sense of writing the names of officers of Kova, because there is no such thing, as a matter of fact, except those who were in charge in their own capacities. Now then, before that time the Lithuanian Socialist Federation was not affiliated with the Socialist Party of America. I was secretary then also, of the Lithuanian Socialist Federation. At that time we issued charters to our new branches which have been organized in various cities, and we have a committee who incorporated the Lithuanian Socialist Federation. This committee signed on charters for some time, and then one of the members of the committee *have* resigned from the Lithuanian Socialist Federation, the other went a little far from the central office, and the Executive Committee ruled that the editor-in-chief, the manager of the plant and the secretary who had his offices in this plant, should sign on the charter applications, that is, on the charter copies. So we signed as the president, secretary and the treasurer, because there was a space with the titles printed. Then when this postal requirement came up, Mr. Jakstys, he says "Well, if they want to demand the officers which we have not got here, what we can do is to put all of these members of the charter committee." Of course, I do not know whether it is right or not, and it did not affect me very much, 266 because I have nothing to do with the management of the paper and its affairs. So the blank was filled out, the editor was signed as president, the manager signed as treasurer and of course they have not signed themselves, but their names was signed, and the manager signed as a treasurer, and since that time they followed mostly the same thing, and as a matter of fact I was entirely separated from the Federation at the time we affiliated with the Socialist Party, because I am paid by the Socialist Party also, not by the Lithuanian Socialist Federation.

Q. That is your explanation of how the names got on as officials of Kova?

A. No, not as officials of Kova. They are understood to be officials of the Lithuanian Socialist Federation.

Q. I know, but that is your explanation of how it got on this Government Exhibit, namely this paper which is required by law to be filed with the postal authorities?

A. Yes, sir.

Q. That is your explanation of that. Now what did the editors have to do?

A. In Kova, with the paper?

Q. Yes; what did they do?

A. Simply they had to furnish the material for the Kova. They wrote their manuscripts.

Q. Editorials, news items?

A. News items.

Q. Clipped papers, I suppose?

267 A. And such things.

Q. Just the same as all editors do?

A. Yes.

Q. Did they ever consult you to ask your permission as to whether or not an article should appear?

A. No, sir.

Q. Did they ever come to you and ask you whether or not you wanted a certain article to appear?

A. Well, they have asked me sometimes whether I think that the article should go in the paper, but they did not ask me whether I wanted it or not; because I do not think that I had anything to say on that.

Q. If you had said "No, I do not think that article ought to appear in the paper," would they have had to keep it out?

Mr. Roberts: I object to that. I do not think we can speculate about what people would have done if he had said something to them.

The Court: It is merely to test the fact of the extent of their authority. I will permit that.

A. No, sir, I could not say what articles should go into the paper.

By Mr. Nelson:

Q. What did you put into the paper beside these official communications that you spoke about?

A. Practically nothing.

268 Q. I show you Government Exhibit No. 23. Have you seen that before?

A. Yes, sir.

Q. Did that appear in Kova?

A. No, sir.

Q. Do you know who got that out?

A. Yes, sir.

Q. What is it?

A. What is this thing?

Q. Yes; what is that?

A. It is mostly a copy or a digestion of the rules printed by Provost-Marshal General Crowder.

Q. In reference to what?

A. In reference to those being called to the army.

Q. It is a translation or a summary?

A. Mostly a summary.

Q. Of Provost Crowder's regulations with regard to drafting?

A. Yes, sir.

Q. Who got that out, do you know?

A. I got it out myself.

Q. You got it out?

A. Yes, sir.

Q. Why did you get it out?

A. As the secretary of an organization which was composed of a good number of members. I was receiving various sorts of questions, when the draft law came into effect, asking me for certain advice and explanation and so on, and of course I did not deem it my duty to write letters to each registrant who wanted my advice, and

269 besides that there were several various questions which I thought that it was not my duty to advise as a citizen of the United States.

Q. Regardless of what you thought, what did you do?

A. So I thought I had better translate all of these regulations, or make it as brief a digest of it as I possibly can with the time I had at that time, and send it out to all branch secretaries of the Lithuanian Socialist Federation, telling them that the secretary of the Lithuanian Socialist Federation has nothing to advise except that what is published by the Government, and here is the translation of it, and I said that no further advice will be given, because those who will try to aid those in any way who have registered and are called to the army, they will be punished themselves, and therefore I says this was a thing which was published by the Government, and I have digested it just as short as I possibly can, and sent it out to the secretaries. I did not think I was doing wrong. I thought I am doing my duty.

Q. Regardless of what you think, just tell the Court and Jury what you did?

A. That is about all the story about that leaflet, about that particular thing.

(At 1 o'clock p. m. a recess was taken until 2 o'clock p. m.)

270 JOSEPH V. STILSON, recalled, direct examination resumed.

By Mr. Nelson:

Q. I hand you Government Exhibit No. 23, which is a circular in Lithuanian, and which has been testified to by you you sent out through the mails to your various branch secretaries, and I will read you from Government Exhibit 24, a translation of the pamphlet you have in your hand.

Mr. Roberts: So that the Jury will understand it, this is the gray circular?

Mr. Nelson: The gray circular.

By Mr. Nelson:

Q. I ask you to go over the Lithuanian as I read the English, and if there are no errors, I will continue to read. If there are, you will stop me and tell me what the errors are. We are only interested now in big errors. Small errors or changes in words will not matter. I also understand that you have testified that this is your summary of Provost Crowder's regulations with regard to the Draft Law?

A. Yes, sir.

Q. (Reading:) "Advice to those called in the army. The secretaries of the branches should examine this announcement well and, where necessary, give advice to our comrades. Examinations. Having received announcement, one should go to the appointed place at the time specified, where the Doctor will examine him. Aside

from the examination, the Doctor will also ask these questions: Have you found that your health and habits in any way interfere with your success in civil life? If so, give details. 'Does ill health or habits, in any way, interfere with the success of your life?' If so, explain in detail.) 2. Do you consider that — are now sound and well? If not, state details. Do you think that you are now entirely healthy? If not, then what troubles you?) 3. Have you ever been under treatment in a hospital or asylum? If so, for what ailment? (Were you ever treated in a hospital or asylum? If so, with what disease were you ailing?) Those who have or have had any ailments should properly explain them to the Doctor in order that he might understand. After the explanation, it will be necessary to sign. Those who the Doctor certify as healthy, will be regarded as accepted. All the accepted can claim exemption within seven days. The following can be grounds of exemption. (There are more, but they do not concern our members.) 1. That you are a subject of Germany, regardless, whether or not a citizen of this country. 2. That you are a foreigner (alien, pronounce e-l-a-e-n) that is that you have not first citizenship papers. 3. That you work in an establishment necessary for the military maintenance of the United States. 4. That you work on merchant ship. 5. That you are married and must support a wife, or child. 6. That you must support a widowed mother. 7. That you are the father and support of orphan sons under sixteen years of age. 8. That you must support old, or infirmed parents unable to support themselves. 9. That you are a brother and support of an orphan or orphans, brothers, under sixteen years of age. 10. That you are a member of a religious sect, or organization, whose principles are opposed to all wars. The Government makes these kinds of announcements: Announcement will also be sent to you, but posted in the office of the local board will be a warning which will be an urgent request that you be present for examination. The law itself imposes on you yourself a duty to ascertain when you will be called. The announcement will be sent for your convenience, but should you not receive a letter, then you cannot justify failure to be present. Note the list of names posted in the office of the local exemption boards of those called, and note when they will call you. Regardless of whether you shall claim exemption, or not, you should be present at the examination at the time and day specified in the announcement. If the local exemption board finds you unfit, it will give you a certificate and advise you as to your further duties. If you require exemption, then you will have to make in the course of seven days from examination the claim. Having made your claim, you would be given ten days additional to show the justice of your claim. If they find you fit and you do not claim exemption or shall not be present for examination at the appointed time, then you will be regarded as accepted for the army. When you receive announcement that they will take you to the Army, then within seven days, if you desire, you can make application for exemption. The blanks on which claim is made are rather ordinary. If you wish to be exempt (a) go to the office of your local board and

ask for blank form. 110 for temporary exemption (for exemption), or form 121 for permanent exemption (discharge.) If the local board should not have further blanks, ask for the book in which are given the forms, and copy same from the book yourself. (b) Fill out the blank and give it to a member of the local board. (c) Do that within seven days from the time when the local board posted the warning and sent you the announcement. Another person may make claim for you, but he should use different blanks, which he will get at the office of the local board. Having presented your claim, in the course of ten days you should furnish evidence, relying on which you claim exemption. With respect to evidence, observe the following: First. Ascertain from your local board the number of the blank form on which you must set forth the evidence. (As separate blanks are required for different evidence.) Second. Ask that they give you such blank forms, and if the local board has not them, then demand the book and copy from it. Third. Having written down your grounds, make affidavit (witness by oath) and 274 within ten days return to the local board. Remember:

your grounds should be set forth on a specified form, as the local board will be unable to exempt you if you do not furnish them a certificate under oath (by affidavit) according to the explanation. Members of the local boards will not enter into discussion with you and no other grounds will be valid, except the mentioned certificate under oath, unless the local board will require other grounds, which, however, will be a rare occurrence. How soon will the fate of those claiming exemption be decided? The local board will decide the claim of every temporary exemption or permanent exemption in the course of three days from the date upon which the witnessed certificates shall be presented. If they should confirm your claim, they will issue to you a certificate of temporary or permanent exemption. Remember That the certificate can be withdrawn at any time. If that certificate is temporary, it ceases to be valid as soon as the conditions in reliance on which it has been issued, shall change. After that, they can take you into the Army. Remember, that the Government can require the District exemption board to have the local exemption board withdraw the certificate issued. And should it be withdrawn, that you are in the same class as those who made no claim of affidavit. If the local board should not exempt you, then you should desire to appeal to the District Exemption Board, do as follows."

275 A. I beg your pardon. Where it says "If the local board should not exempt," did you say "then you should desire"?

Q. "Then you should desire to appeal to the District Exemption Board, do as follows."

A. It is "And if you should desire to appeal."

Q. "If the local board should not exempt you, if you should desire to appeal to the District Exemption Board, do as follows;" is that what you mean?

A. Yes.

Q. (Continuing reading:) "1. Go to the local board and get blank Form 153 or 154, and in case there are no blanks, then copy

same. Take a copy (from the book) blank Form 151 or 152 for appeal to the district board. Give your appeal to the local board on blank form 153 or 154; and send the appeal to the District Board on blank Form 151 or 152. Do this within 10 days, when it shall be declared and announced that you will not be exempted from the army. Furnish all new evidence (not those which you have already given to the local board), attested as before, to the District Board within the course of five days from the time that you have made appeal. The District Board will decide your matter within five days and let you know by letter. The government has announced these explanations, but in order that they may be more explicit, it is necessary to add here to these. All those, who shall claim temporary exemption (exemption), relying for exemption on conditions, numbers 1 and 2 should demand blank Form 110: All those, who shall claim permanent exemption (to discharge), should demand blank Form 121. Likewise there are blanks referring to other questions: The above mentioned numbers 1 and 2—the first mentioned blank—and the latter afterwards. Attention. Although no privilege is given to conscientious objectors to war (Conscientious objectors to war), however, the socialists, their principles being opposed to war, demand exemption, but not having any of the aforementioned grounds, can demand exemption as conscientious objectors to war. For that purpose, affidavit Form 143 and 143a should be used." Is that right, the same numbers?

Mr. Roberts: It is evidently an error in the original. That is the way it reads.

By Mr. Nelson:

Q. (Continuing reading:) "The latter should be certified to by the secretary of that organization whose principles forbid its members to wage war and which has members desiring to be exempt. The claim for exemption should be made on blank Form 121 (for discharge). It would be well in filling out the blanks to get the age of one or another comrade who is familiar with the English language. Take notice. On the back of the blanks which shall call you for examination will be this announcement: That all those who shall endeavor themselves to escape military service or shall aid others in escaping military service will be punished by not more than ten years' imprisonment. Those, however, who shall conspire with others or shall interfere with the carrying out of the compulsory conscription law shall be fined up to \$10,000, or up to two years' imprisonment, or both. Therefore, as you see, the Central Committee cannot give any advice. Comrades should decide everything at the place as they know all the regulations. J. V. Stilson, LSS, Secretary-Translator." That is about a correct translation?

A. It is about. You can express one sentence or another a little different.

Q. Did you ever, by word or deed, violate the law with respect to conscription?

A. I did not.

Q. Did you ever, by word or deed, conspire with anybody to violate the law?

A. I did not.

Q. I mean now with regard to conscription?

A. That is what I understood.

Q. In the same way, I ask you, did you ever by word or deed, by yourself or in connection with others, do anything to interfere with the military establishment of the United States or to cause insubordination?

A. I did not.

278 Cross-examination:

By Mr. Roberts:

Q. I understand that it was about five years after you came of age that you took out naturalization papers?

A. I filed my application for the first papers, I think it was in 1913.

Q. And got your final papers in 1915?

A. In 1915.

Q. At that time you lived in Philadelphia?

A. I think so.

Q. And applied for naturalization here?

A. Yes.

Q. You are now living in Chicago, you say?

A. Yes, sir.

Q. I understood you to say that you had no official organization paper at this time?

A. What I meant by official organization paper is the paper on the subscription basis, as it was before, that is, like for instance Kova was. It was circulated to everybody mostly. We have not got that paper.

Q. Is Kova still being published, then?

A. Oh, no.

Q. When did it cease?

A. I think it was some time in December, prior to my arrest; a few days prior to my arrest.

Q. A few days prior to your arrest it ceased voluntarily?

A. No, no; it was held up by the local Post Office.

279 Q. Then I was right, that it was stopped by the Post Office, and Mr. Nelson was wrong; is that right, or is Mr. Nelson right?

A. The local Post Office notified—

The Court: Is that of any value to us, Mr. Roberts? Try this defendant.

By Mr. Roberts:

Q. Did you say that you did not make any contributions to Kova?

A. I did not say that I did not make any contributions to Kova. I said that I had nothing to do with the insertions of any articles in the Kova.

Q. What do you call Government Exhibit 25, which is signed by you?

A. If it is signed by me, then it must be my article.

Q. Look at the article, Exhibit 25, issue of June 1st, page 2, and tell me, first, whether the two articles there are signed by you?

A. It is signed by me.

Q. Are they your articles?

A. Yes, sir.

Q. You contributed other articles to Kova, did you not?

A. I think I did, some times. What I wrote I signed under them.

Q. And you were the secretary of this organization of which Kova was the official organ?

A. Yes, sir.

Q. And there were other papers published at that office, were there not, by the same federation?

A. Yes, sir.

Q. You were a member of the Executive Committee also, were you not?

A. No, sir.

Q. I show you some papers headed "Naujoji Gadyne." By what organization was that magazine published?

A. It was published by the Lithuanian Socialist Federation.

Q. By the same federation?

A. Yes, sir.

Q. And where was it published?

A. It was published in Philadelphia.

Q. What does this line on the page which gives the organization which publishes it mean?

A. "Naujoji Gadyne;" that is the name of this paper. It means the contributors of this paper.

Q. Does it not mean the associates?

A. No, it does not mean associates.

Q. Your name appears there, does it not?

A. Maybe, I do not know. Yes, that is my name as a contributor.

Q. As a contributor to that paper?

A. Yes.

Q. And it is published at the same place?

A. Same place.

Q. And by the same organization?

A. Yes, sir.

281 Q. And that word does not mean associates?

A. No, sir.

Mr. Roberts: I will ask to have these papers which I have produced numbered Gov. Exhibits Nos. 35-A, B, C, D and E.

(Papers marked "Government Exhibit- 35-A, 35-B, 35-C, 35-D and 35-E," respectively.)

By Mr. Roberts:

Q. Now I show you another paper, headed "Apzvalga," and ask you where that was published?

A. That was published at 229 North Sixth Street, at the same place.

Q. By whom?

A. It was published by my office as a means of communication with the branches.

Q. At the head of that paper, it appears both in Lithuanian and English as follows: "A monthly review devoted to the interest of and published by the Lithuanian Federation Socialist Party 229 North Sixth Street, Philadelphia, Pa., Joseph V. Stilson, Translator-Secretary"?

A. Yes, sir.

Q. Then you were responsible for that publication there, were you?

A. I think so, yes, sir.

Mr. Roberts: I will ask to have one of those issues marked Government Exhibit 36.

(Paper marked "Government Exhibit No. 36, V. G. M.")

282 By Mr. Roberts:

Q. Any others?

A. I do not think there were any other papers. That was a bulletin we issued monthly to our branches.

Q. And you had to send out other notices and bulletins to all your branches, did you not, as secretary?

A. What other notices?

Q. Any other notices?

A. Oh, yes.

Q. For instance, you sent out the conscription notice that has just been read to you, Government Exhibit 23? How was that notice made?

A. That was made by me and I sent it to branch secretaries.

Q. Who made the stencil on which it was printed?

A. I made it myself.

Q. You made it yourself?

A. Yes, sir.

Q. You made it on that typewriter, did you not?

A. I made it on that typewriter, yes, sir.

Q. You then are able and familiar with the way to cut a stencil, are you?

A. Yes, sir.

Q. How did you send out all your other weekly or monthly or semi-monthly or every six monthly notices? You sent them out, as a matter of fact, in stencil sheets, did you not?

A. Usually I sent them in stencil sheets. Sometimes,
283 when I — too busy to make it, it was printed on the printing press.

Q. You had 150 branches?

A. About.

Q. You did not send out typewritten notices, you had them stencilled, did you not?

A. No, I mean when I had anything I was too busy to make, I simply asked the manager to print these blanks on the printing press.

Q. Then you did not send them out by stencil?

A. Not all of them.

Q. Some of them?

A. Some of them, yes.

Q. And you stencilled them on that stencil machine there?

A. Yes.

Q. Which you knew how to use?

A. I knew how to use, yes.

Q. When you wanted anything put in the papers, you say you handed the copy to the editors?

A. To the editors.

Q. To go into the paper?

A. Yes, sir.

Q. And you say that you and these editors were both elected by the Association or the Society?

A. Yes, into a different capacity.

Q. Were you a member of the Literary Committee or Literature Committee?

A. No, sir.

284 Q. You are not a member of any committee?

A. No, sir.

Q. I just want to get it clear. Were you not shown that gray circular at your office by Mr. McHenry?

A. Which gray circular?

Q. No. 23.

A. Yes.

The Court: That is the one Mr. Nelson read?

* Mr. Roberts: Yes.

The Witness: I do not know whether it is the same circular.

By Mr. Roberts:

Q. You were shown a copy of that gray circular and asked if it was a copy of your work and whether you had written it, and you said yes, did you not?

A. Yes.

Q. When Mr. McHenry asked you that he did not tell you it

would be to your advantage to tell him, or anything of the kind, he simply asked you the question, did he not?

A. Yes.

Q. And you answered at once?

A. I told him, "Let me see the circular," because I never sent out anything that is unsigned by me. What I send I signed my name to it.

Q. I show you Government Exhibit No. 1. Is it not a fact that Mr. McHenry showed you that also in your office?

A. Yes, sir.

285 Q. I wanted to get that clear.

A. Yes, sir.

Q. And is it not a fact that, as soon as you looked at it, you said you did not sign that or did not send it?

A. No, I looked for comparison, just through what is in there, and I thought it is not mine.

Q. You thought it was not yours, and said so?

A. And said so, because the heading and the beginning of the circular was entirely unfamiliar to me and I told him it was not mine.

Q. Had you ever seen circulars of that purport in the office of that publication before?

A. Which circular, this in the exhibit first?

Q. Exhibit 1.

A. I had never seen it.

Q. You have no way of explaining how there should have been in you office yellow copy of the same thing?

A. No, sir.

Q. Do you know J. S. Tusan of 18 Ames Street?

A. I cannot remember. I do not think I know him. Maybe I do or maybe I do not, but I cannot remember.

Q. Is there not an Ames Street, in Lowell, Mass., or Brockton, Mass.?

A. Oh, yes, I know the street.

Q. Where is the street?

A. In Montello, Mass.

Q. In what?

286 A. In Montello, Mass.

Q. Montello, Mass.?

A. Yes, sir.

Q. And there is a branch of your organization there, is there not?

A. Yes, sir.

Q. Is J. V. Tusan connected with that branch of your organization?

A. I do not know it.

Q. Or J. A. Tusan?

A. I do not know.

Q. You do not know him at all?

A. I do not know, sir.

Q. Whom do you correspond with, or did you at that time, in Lowell, Mass.?

A. I corresponded with the branch secretary.

Q. What was his name?

A. But I cannot recall his name just now.

Q. You do not remember his name?

A. I do not remember now.

Q. Are you sure it was not Tusan?

A. I do not think so.

Q. If I called the name to your attention you would remember whether that was the secretary you correspond with, would you not?

A. I say I do not remember whether he was the secretary.

287 Q. You do not remember any man by the name of Tusan?

A. Tusan? No, I do not think so.

Q. Now then, you told me about this affidavit that Mr. Sukys made and signed?

A. Yes, sir.

Q. You say there was quite a lot of discussion about that?

A. Yes, sir.

Q. In which you took part?

A. Well, I did not take part, but I was asked individually by a former manager of the place. He came to me and he says "What do you think of that, they — demanding the name of the secretary and the treasurer?" I says "Well, if they demand the name and the address of the secretary of the Federation, you can write it down if you wish so."

Q. But you said it was agreed that the manager's name should be put down as treasurer?

A. Well, he is the treasurer also.

Q. Look at that and see if he is not put down as manager and not treasurer?

A. Well, I think, the way I understood, while we was asked the first time, I understood they were going to write as treasurer. I did not follow these things afterwards. It was some time ago and I cannot just exactly recall it word by word.

Q. You knew the policy of this paper; you read it every week, did you not?

A. I read the official announcements what I printed. I thought it is my duty to see if they are in there, but as to the news, while I have no use for them anyhow, and I was too busy.

288 Q. You did not read the news or the editorials in this paper at all?

A. Some editorials, I did read some, but I never read any news.

Q. Did you not contribute some editorials?

A. No, sir.

Q. I show you Government Exhibit No. 3, which is an editorial, is it not?

A. It says so.

Q. It says so?

A. Yes, sir.

Q. Did you not write it?

A. No, sir.

Q. Are you sure?

A. I am sure positive.

Q. You have no knowledge of it?

A. I am sure positive; whatever I write anything in the paper, I signed my name to it.

Q. Let us take what you say you signed your name to.

A. Yes, sir.

Q. Which is an article that I have of June 1st. In that article you say "By constructive programs of war we leave for the concern of those who fill their pockets from the blood and suffering of the people of their country and all other countries." Did you write that?

A. I cannot recall it. I do not know if it is signed by me, or maybe it is in parenthesis, or it might be some announcement by somebody else. I do not know what it is.

Q. Let me see if it is an announcement by someone else.

A. I do not know what it is unless I see it.

Q. All right, I will ask you to look at it.

A. These things—

Q. Wait until you see if I translate it right.

A. These things was published as a communication from the national office of the Socialist Party.

Q. Does it read as I said?

A. Yes, these words, it says mostly something like that.

Q. In this circular Government Exhibit No. 1, the same thing is said, is it not, in effect, right about the center of the circular: "While the workingmen of the different countries are being torn to pieces on the field of battle and are dying most horribly, at this same time exploiters"—

A. Where is that, please?

Q. It starts with the words "War and compulsory conscription." I do not read that sentence. We do down to the sentence beginning "While the workingmen of the different countries." Do you find that?

A. I do not find where the workingmen of the different countries it says but it says workingmen.

Q. What does it say about workingmen?

A. I cannot find "While working men of all other countries." I find "The workingmen shed their blood and sacrifice their life." I find these words.

Q. Go on.

A. It is pretty hard to translate at once from one language into another.

Q. All right, take your time.

A. And their exploiters.

Q. "Their exploiters," yes; I find that. "Wading in the blood"?

A. "Wading in the blood."

Q. "Of the slain workingmen"?

A. That is about right.

Q. "Fill their pockets with shining golden coins;" is that right?

A. Yes, sir, that is correct. Now I want to compare this, please. Will you show me the place where it is, then I will not be compelled to look at the whole article.

Q. It is near the end of the article, within one sentence of the end of the article; the second sentence from the last. It begins "By constructive programs of war we leave for the concern of those who fill their pockets from the blood and suffering of the people of their country;" is that right?

A. Yes, it is mostly right. It has different words.

Q. But the same thought?

A. Maybe it is the same thought.

Q. You say you did not know that the paper Kova was agitating against the draft, publishing editorials agitating against it, after the Draft Act had been passed and after the Espionage Act had been passed; you did or you did not, which is it?

291 A. Well, in fact I did not.

Q. And you say also that you did not know that it was publishing news articles from various comrades showing how they had objected and how they had resisted the draft; you did not know that?

A. I never read it. What I care about in the paper is to see if my things which I wrote has been inserted.

Q. You mean to say that you were very careful about your own articles?

A. As an official of the organization, when I print my announcements I have got to see that they are in there, and if they are not there the branch would not know them.

Q. Government Exhibit No. 1 certainly advises both resistance of the draft and fleeing from the draft, does it not? You have read it?

A. Which, No. 1?

Q. Oh, yes, you have read it half a dozen times.

A. I have seen that No. 1.

Q. It certainly advises both, does it not?

A. I have not read it very carefully.

Q. Read it carefully, because we will not have any doubt about it. It certainly advises men to resist the draft and to flee from it, does it not?

Mr. Nelson: In order to save time, I object to the question. This witness has testified that he did not write it, and he does not know who did write it. Now he is asked by Mr. Roberts as to
292 whether it does not advise men to interfere with the draft. It is immaterial.

The Court: I assume the cross-examination is directed to the very question of its authorship.

Mr. Nelson: Objection withdrawn.

The Court: Objection overruled and exception noted for the defendants.

Exception noted for defendants by direction of the Court.

A. It does not exactly oppose the Draft Law, but it advises to run away from it.

By Mr. Roberts:

Q. It does advise to run away from it?

A. Yes.

Q. Now look at the fifth paragraph. Does not that fifth paragraph say "Such a law, enacted against our will and the Constitution of the United States, to such a law we must not submit"?

A. Not exactly against our will. It says against the will of the people, I have got that; "enacted against the will of the people."

Q. "We must not submit." That is the first sentence: "Since the Government has enacted the Compulsory Conscription Law against the will of the people, to protest alone against this law is insufficient;" is not that a correct translation?

A. Yes.

293 Q. And then it goes on to say, "to such a law, enacted against our will and the Constitution of the United States, we must not submit"?

A. Yes, it says so.

Q. Then it does counsel failure of submission to the laws, and you say that pamphlet does not express the doctrines of your society or association?

A. No, sir.

Q. In other words, your association does believe in submitting, does it?

A. Well, I do not know what the association believes in truth, because there are various members in it and many of them in it.

Q. Has it any policy? You were asked what the policy of your society was, whether it was a society that believed in the majority ruling and the minority obeying the majority, or whether it believed in something else; now which is it?

A. Well, the society believed in the majority ruling.

Q. Then that does not express the society's belief?

A. No, sir.

Q. Do you know Paul Sondergast?

A. I do not know him personally. I have heard about him.

Q. You have heard of him?

A. Yes, sir.

Q. You know he is a member of your society, or was a member of your society, living in the city of Wilkes-Barre, do you
294 not?

A. I think so; I do not know whether in Wilkes-Barre. It is around there somewhere.

Q. But you did not know him personally?

A. I did not know him personally.

Q. Have you ever communicated with him?

A. No, sir.

Q. Ever sent him any pamphlets for distribution?

A. No, sir.

Redirect examination.

By Mr. Nelson:

Q. To clear up that one point about Exhibit 25, you were shown an article in the issue of June 1, 1917, which was published before the Espionage Act and after the Selective Draft Act was enacted into law, and you were asked about a certain portion of that. The article is signed by you and you were asked if you signed it. That is correct, is it not?

A. Yes, sir.

Q. Now is not that article a statement of the majority and minority platforms of the Socialist Party?

Mr. Roberts: I object, if your Honor please. It is highly leading and suggestive. I have no objection to his being asked what the article is.

(Question withdrawn.)

(Objection withdrawn.)

The Court: It is a little leading in form; but I do not know that it is in substance. It is directing his attention, and saving time, to the specific thing that he wants to know. Go ahead and answer it.

A. Of course, I have not exactly looked at it through the whole article, but the way I judged, it was some announcement from the national office of the Socialist Party, and the most part of that article is the translation from that article, because where I sign as secretary of the association it means I have some sort of an official communication to somebody and that communication should be announced in the paper.

Q. Had the Socialist Party at that time taken any stand with reference to this war?

A. Oh, yes, I think so.

Q. Was the Socialist Party unanimous with regard to its stand with reference to the war?

A. No, sir.

Q. How many views did the Socialist Party express?

A. Various different views, I think about—

Q. Not among the individuals, but by the party?

A. By the party itself?

Q. Yes; how many platforms were put out?

A. There were three of them, I think.

296 Q. Roughly, were these platforms in favor of or against the war?

A. All of them were against the war, but some of them were more or less.

Q. Was one of the platforms called the Spargo platform?

A. Usually in the Socialist Press it was called the Spargo platform, because he was the chairman of a committee which made a minority report, the way they call it.

Q. Was that platform in favor of the war or against it?

A. It was against it, as I understood it.

Q. Was the Spargo platform against war in general or for war in general?

A. Well, all the Socialist platforms are against the war in general, the way I understand it.

Q. Was the Spargo platform, in view of the fact that this country was then at war, in favor of this country or opposed to this country in the war?

A. Well, I can't exactly remember.

By Mr. Roberts:

Q. I want to be clear about this thing. I call your attention to the very article in question, and I ask you if as secretary you did not quote down to the point where I have my finger?

A. Yes, sir.

Q. And if the quotation of that platform don't end there and if the rest of it is not your personal composition?

A. It is so, but there are some quotations in it also.

297 By Mr. Nelson:

Q. What was that last?

A. There are some quotations in it. I think all the part of that minority report is in there, and then some of my words there, some of my sentences.

JOSEPH SUKYS, having been duly sworn, was examined and testified as follows:

By Mr. Nelson:

Q. Can you get along without a translator?

A. Yes, sir.

Q. You can?

A. Yes, sir. I can't talk without a translator.

By the Court:

Q. You can or cannot?

A. I cannot.

MISS ANTOINETTE V. BALSER, sworn as interpreter, and examined as follows:

By Mr. Roberts:

Q. Are you a member of this organization?

A. No.

Q. You are not a member?

A. No.

Q. Not in any way connected with this paper?

A. No.

The witness was then examined through the medium of the sworn Interpreter, as follows:

298 By Mr. Nelson:

Q. Where do you live?

A. Now?

Q. Now.

A. 219 North 58th Street, West Philadelphia.

Q. What do you do for a living?

A. I work in the Kova Printing place.

Q. Do you mean the Kova Printing Plant or the Federation Printing Plant?

A. It is Kova's Printing Plant and it is understood only as Kova's Printing Plant.

Q. Who hires you?

A. The Executive Committee.

Q. Of what?

A. To be the manager there. To see that the work is done.

Q. The Executive Committee of what organization?

A. Lithuanian Socialist Federation.

Q. How much do you get a week?

A. When I began working in 1917 I received \$15 a week. Later at the end of the year, I don't recall the month, I was raised \$5., and I received \$20.

Q. As manager of this plant what were your duties?

A. Well, my duties were such that I was to see that all the workers came on time, also to see that everyone had work—that is, those workers that belonged to me; that is, the printers, the compositors and the pressmen.

Q. Who paid them their wages?

299 A. I did.

Q. Was other work done at that plant besides printing Kova?

A. Yes. All kinds of work that is done in a printing plant.

Q. Did you do commercial work besides printing of newspapers?

A. We did all kinds of work upon order.

Q. Did you work for other people besides the Lithuanian Federation?

A. Yes. We did work for all that gave us orders.

Q. Did you print in English as well as Lithuanian?

A. The times were not often when we received work done in English, but when we got it we did it.

Q. Did you have anything to do with directing Stilson's work?

A. Nothing.

Q. Who elected or hired or appointed Stilson?

A. The Lithuanian Socialist Federation, through referendum.

Q. Did you have anything to do with directing the work of Vidikas, the chief editor?

A. No.

Q. Who elected or appointed Vidikas?

A. The Lithuanian Socialist Federation, through referendum.

Q. Did you have anything to do with directing the work of the assistant editor, Stalioratis?

A. Nothing.

Q. Who elected or appointed him?

A. The Literature Committee and the Executive Committee.

Q. Who told you what was to go into the paper called Kova?

300 A. No one said anything to me. My business was to get the paper printed and sent out.

Q. Who gave you the copy for Kova?

A. The editor gave all kinds of written matter to the linotype writers, and they set everything up, and then gave everything into our hands.

Q. After the editors gave the copy to the linotype operator did you have authority to go over and change the copy or to remove it?

A. No. In our plant each person has his own duties and each one answers only for himself.

Q. Who did he answer to?

A. The Executive Committee.

Q. Where did the Executive Committee meet?

A. In different places, but mostly they corresponded because they lived in different places.

Q. You had a typewriter in this plant?

A. Yes.

Q. How many?

A. One.

Q. Where was that kept?

A. The secretary's desk.

Q. Where was that?

A. In the front, near the window.

Q. Did you ever see anyone operate that typewriter?

A. Yes. I saw Stilson, I saw Baltrunis, our bookkeeper, and the editor, Vidikas, sometimes.

Q. Were you there during the day time or at night?

301 A. My job, the manager's job, is not according to hours. Some times they used to stay there until twelve o'clock at night and some times begin at six in the morning.

Q. Did you have a key to the place?

A. Yes.

Q. Did other people have a key to the place?

A. Yes.

Q. How many?

A. Stilson had one, the editor, Vidikas, our bookkeeper, Baltrunis, the linotype operator, Rudaitis, and the pressman, Yeslavitz. That is all at that time.

Q. Did you ever see the other people besides Stilson and yourself in the printing plant at night?

A. Our printing plant belongs to the organization. Therefore, every member of the organization has a right to come there whenever he pleases.

Mr. Roberts: That is not an answer to the question.

(Question repeated.)

A. There used to come.

By Mr. Nelson :

Q. Will you please answer yes or no, and then explain, if you have an explanation?

A. Yes.

Q. Was the typewriter at the printing plant locked up?

A. No.

Q. I show you Government's Exhibit No. 1 and ask you if you ever saw that before?

302 A. No.

Q. Did you write anything for publication in Kova?

A. Advertisements.

Q. Who secured advertisements for Kova?

A. Business people would send me the advertisements, and others that I had to put in for my own business.

Q. Who secured advertisements for Kova?

A. The paid ones I did.

Q. Outside of writing the advertisements for Kova did you write anything for Kova?

A. Until I became a manager I did.

Q. I don't think you understood the question. Besides yourself who asked advertisements or secured advertisements for Kova?

A. No one. I am talking about the ones that were not paid.

Q. How old are you?

A. Forty-seven years.

Q. Where were you born?

A. Lithuania.

Q. You are a citizen of what country?

A. I have my first naturalization papers.

Q. In what country?

A. America.

Q. Where were you born? In what country?

A. Lithuania.

Q. Before you secured your first naturalization papers in this country, or your first papers I will call them in this country,
303 of which country were you a subject?

A. Russia.

Q. Have you registered under the Selective Draft Act?

A. No.

Q. You said you were forty-seven, didn't you?

A. Forty-seven.

Q. Have you ever by word or deed done anything to cause anybody to interfere with the military establishment of the United States?

A. No.

Q. Have you ever made any sort of an arrangement or had any sort of an understanding with anybody to cause insubordination in the United States Army?

A. No.

Q. Did you write any news articles or editorials for Kova?

A. Until I was a manager sometimes I did write.

Q. When did you become manager?

A. I think the 28th of February, 1917.

Q. Did you ever enter into an agreement or have an understanding with any other person to issue a circular or to put anything into Kova which would interfere with the United States Military Service?

A. No.

Q. Did you ever see or hear anybody in Kova making arrangements to publish any sort of document or any sort of printing to be used against the American Military establishment?

A. No.

Q. I show you Government's Exhibit No. 28, and I ask you if that is your signature?

304 A. Yes.

Q. That, as has already been indicated, is a statement of ownership, management, circulation, etc., required by the act of Congress of April 24th, 1912. In that paper you set forth that the publisher of Kova is the Lithuanian Federation Socialist Party?

A. Yes.

Q. And you have put yourself down, "Business Manager, J. Sukys"?

A. Yes.

Q. Who got the profits from the publication of Kova?

A. No one. The organization.

Q. If you had any money left over at the end of any term who did you turn it over to?

A. There was never any money left.

Q. If there had been any profit who would you have turned it over to?

A. For that same paper's publication?

Mr. Roberts: For the continuation of the same paper is what he said, didn't he? Wasn't his answer "For the continuation of the publication of the paper"?

The Interpreter: Yes.

By Mr. Nelson:

Q. You put down here "President, Vidikas." Who elected Vidikas President of Kova?

A. He is not the President of Kova. He is merely the editor.

Q. Will you explain to the court why you put him down here as President if he was not President of Kova?

305 A. The formula which we had to fill out required that there should be the President, the Secretary, and the Manager, and being that there is not any such establishment—there is not such an establishment now, but there was when we did not belong to the Socialist Party—and there being a requirement that we should fill out such blanks in such a way, and being that they did that before, I did that accordingly and filled out the same thing there.

Q. Are you a Socialist?

A. Yes.

Q. Are you opposed to war on principle?

A. On principle I do not agree to war.

Q. Now that this country has declared war on Germany does your opposition to war in general go so far as to cause you to violate the laws of the United States?

A. I did not violate anything.

Q. Have you advised anybody, directly or indirectly, to violate a law of the United States?

A. No.

Mr. Roberts: The Interpreter asked him "directly." I think the question was "directly or indirectly."

Mr. Nelson: Will you ask the witness "directly or indirectly"?

(Question repeated.)

A. No.

Adjourned until Wednesday, October 3rd, 1918, at 10 A. M.

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Third Day.

UNITED STATES

vs.

STILSON and SUKYS.

Philadelphia, Pa.,

Thursday, October 3, 1918—10 a. m.

Present: Parties as before noted.

JOSEPH SUKYS, recalled.

(Examined through Mrs. Antionette V. Balzer, Interpreter.)

By Mr. Nelson:

Q. You were asked yesterday whether or not you wrote for the paper, the Kova?

A. Yes, I was asked.

Q. And your answer, I believe, was that you as manager wrote advertisements?

A. Yes, I wrote advertisements and things that belonged to the organization.

Q. What do you mean by "things that belonged to the organization"?

A. That which is supposed to be known to the members, how the organization stands.

Q. With respect to what?

A. For instance, we publish books and pamphlets, what is—

By Mr. Roberts:

Q. Resolutions, he said.

A. No. What is resolved.

307 By Mr. Nelson:

Q. Resolved by whom?

A. And things about the other papers.

Q. And when you say "resolutions," or "what is resolved," to what sort of resolutions do you refer?

A. To the organization.

Q. Do you mean to the National organization or the local organization?

A. Things concerning the Lithuanian Socialist Federation, both local and others.

Q. Do you mean by that official business, or do you mean original articles?

A. Official articles.

Q. I understood yesterday in answer to a question you said that you wrote original articles for the paper before you became manager?

A. Before having time I wrote correspondence. I wrote correspondence to the paper. Later when I became the manager I only took the work that was allotted to me.

Q. And you became manager, I understand, on February 28th, 1917?

A. Yes. I was sent to the paper to undertake duties of manager, but I was not officially elected. I was not officially put there, because another man was supposed to take the place, and I was only put there to fill his place up until he could undertake his duties, and I stayed there until October.

Q. Answer the question. Did you become manager on February 28th, 1917?

308 A. I undertook that work, only it was not official. I only took it for a time.

Mr. Roberts: He said it was not confirmed, didn't he? It was not confirmed.

The Witness: It was not confirmed.

By Mr. Nelson:

Q. Did you take the job of manager unofficially on February 28th, 1917?

A. I was sent by the Executive Committee to take the work from the other administrator, Dudulis, and to give it into the hands of the new candidate.

Q. Answer the question.

A. I cannot understand the question.

Q. When did you first go to the Lithuanian Federation Printing plant to take charge of their business affairs?

A. February 28th I came here.

Q. You said yesterday in answer to two different questions, one you were manager of Kova and one you were manager of the Socialist Federation. Now, tell the court and jury which you meant?

A. I am the manager of the Federation's Printing place, and Kova is printed there.

Q. Tell the court and jury whether or not at any time you or your other defendants, Stilson and you, ever had a meeting with the editors and other people connected with the Federation printing plant with reference to the paper Kova?

A. Yes, I think we had one.

Q. When and where was that?

309 A. I do not recall the date, but I know it was here in Philadelphia.

Q. And what was that meeting held for?

A. The meeting was for this purpose, that when there was a law passed, that there should be translations into English, all articles, and the editors did not have enough time for the work, for the translations, and then they required an assistant. We did not have the authority to take any other person, so we had to hold a meeting, and that is why we held the meeting.

Q. And who held the meeting?

A. The Executive Committee.

Q. The executive Committee of what?

A. The Federation.

Q. And what was decided by the Executive Committee?

A. It was decided that a person should be taken into the place who would help both the administration and the editors.

Q. To do what?

A. Translate the articles into the English.

Q. Did that meeting of the Executive Committee give you any more authority over the editors than you had before?

A. No.

Q. Did that meeting discuss the policy of the Kova with regard to editorials or news articles?

A. I don't know, since I was not there when they were discussing things concerning only the editors. I was working at that time.

Q. Are you a member of the Executive Committee?

A. No, I was not at that time.

310 Q. Is Stilson a member of the Executive Committee?

A. No, he is not.

Cross-examined.

By Mr. Roberts:

Q. You had charge of the circulation of the paper, didn't you?

A. I don't understand the question.

Mr. Roberts (to the Interpreter): You asked him if he had charge of the publication. I did not ask him that.

By Mr. Roberts:

Q. I asked you, you had charge of the circulation, sending the papers to the subscribers, didn't you?

A. Yes.

Q. You had a mailing list in your office of the people to whom the paper was to be mailed, didn't you?

A. Yes.

Q. And you mailed the paper through the United States Mails, didn't you?

A. Yes.

Q. And it went to the members of the Federation all over the United States, did it not?

A. Yes.

Q. And who had charge of collecting the subscriptions?

A. The agents were the only ones that collected subscriptions. Otherwise the members received the paper without any subscriptions.

Q. When any subscription was collected during that summer, to whom did it come? It came to you, did it not?

311 A. Yes, it came to my office.

Q. And you had a bank account?

A. Yes.

Q. Where?

A. Bank of Commerce, Chestnut Street.

Q. Bank of Commerce, on Chestnut Street?

A. Yes.

Q. In whose name was the bank account opened?

A. Kova Publishing Company.

Q. And who had a right to sign checks on the account?

A. The manager and the assistant secretary.

Q. And who was the manager during the summer of 1917? Who signed the checks?

A. I.

Q. And who was the assistant secretary who signed checks during the summer of 1917?

A. Baltrunitis.

Q. And did Mr. Stilson have a bank account of his own?

A. I don't know. He did not have anything belonging to the organization.

Q. Well, who paid for the typewriter supplies for Mr. Stilson's typewriter?

A. Stilson himself.

Q. Was there a treasurer of the Federation separate from you?

A. I don't know of any.

Q. Well, who did you account to for the money that you got?

A. To the Executive Committee of the Federation.

312-13 Q. And the money that you got in was used for publishing these papers that were published, the Kova, the New Era and the Review?

A. Not all, because the money was used for the purpose of the organization.

Q. And Kova was the official organ of the organization, was it not?

A. Yes.

Q. And the Executive Committee appointed you to be business manager of it?

A. Yes.

Q. You say you are not now a member of the Executive Committee. Were you then?

A. When then?

Q. In the summer and spring of 1917?

A. Yes.

Q. So that you were a member of the Executive Committee of the organization that published this paper in the summer of 1917?

A. The paper is published twelve years. It did not begin in 1917.

Q. That is not an answer to my question. My question was, you were a member of the Executive Committee that published this paper or organization that published this paper in the spring and summer of 1917. Yes or no?

A. Yes I was.

Q. You read the paper?

A. Of course, but not all of it.

314 Q. Well, you knew of the articles and editorials that appeared in it?

A. Yes, I read some of them.

Q. Who had charge of sending the papers to the United States Post Office? Wasn't that under your charge?

A. Yes.

Q. When did you cease to be a member of the Executive Committee?

A. Then when I was officially appointed as administrator or manager.

Q. And before that time you wrote for the paper, did you?

A. I do not recall, but if I wrote my signature is there.

Q. I mean before you became official administrator, before you took charge of the business then, did you write for the paper?

A. I could not answer the question because until I am appointed, I am not an official. I understand that before I am appointed I am not officially the administrator or business manager.

Q. Let us get that clear. Before February 28th, 1917, did you write for this paper?

A. Yes, I wrote correspondence from New York, because I lived there.

Q. Who bought the paper that was used in the Kova office?

A. I did.

Q. Who bought the paper that was used to write on that typewriter?

A. We used to use paper that was in the store house of the Kova and some of the paper was bought apart from that.

315 Q. Who bought the other, then? Didn't you?

A. The person who used it.

Q. You were a member of the Executive Committee, you say?

A. Yes, sir.

Q. Who paid Mr. Stilson's expenses?

A. What expenses?

Q. His expenses for typewriter supplies and ink?

A. It was taken from our——

Q. Fund?

A. Fund.

Mr. Roberts: That is all.

Redirect examination.

By Mr. Nelson:

Q. In answer to a question by Mr. Roberts you have said that you were a member of the Executive Committee that published Kova.

Mr. Roberts: He said, in answer to the question, "Yes, I did," didn't he? (To the interpreter:) You did not repeat his answer.

The Court: It was not responsive. That is the reason she did not give it. He is asking him merely whether he had not said that in answer to your question.

Mr. Roberts: I see.

By Mr. Nelson:

Q. Did you or did you not say that in answer to Mr. Roberts' question?

A. I don't understand what it is.

316 Q. Mr. Roberts asked you if you were a member of the Executive Committee that published Kova?

A. The Executive Committee does not publish Kova. The Federation does.

Q. Then, were you right or wrong when you answered Mr. Roberts and said "Yes, I am a member of the Executive Committee that published Kova."

A. Wrong.

Q. Are you a member of the Executive Committee of the Federation?

Mr. Roberts: He said he is not, now.

A. Not now.

By Mr. Nelson:

Q. When were you a member of the Executive Committee of the Federation?

A. I was until September or October, I do not recall, in 1917. I was a member of it.

Q. And then when you became the official manager of the print-

ing plant were you or were you not a member of the Executive Committee?

A. No.

Q. You said in answer to a question by Mr. Roberts that you banked your funds under the name of Kova Publishing Association. Now, do you mean the Kova Publishing Association or the Lithuanian Federation?

Mr. Roberts: "Company," is what he said.

Mr. Nelson: I will change that question.

By Mr. Nelson:

Q. Kova Publishing Company.

317 Mr. Roberts: Kova Publishing Company is what he said.

The Witness: It was called the Kova Publishing Company, but on the checks we had the printed stamp that it belonged to the Lithuanian Socialist Federation.

By Mr. Nelson:

Q. In answer to a question by Mr. Roberts you said that certain paper and material used for writing, typewriting and mimeographing was bought by the different members and by Stilson?

A. I did not say that.

Mr. Roberts (to the Interpreter): You asked him if he did not say that it was bought by the workingmen. He did not say that. He is right. He did not say by the working men. "Different members and by Stilson."

(Last question repeated.)

The Witness: That which we have not got, that is, the black paper that you have to transfer on, we had to buy, but all kinds of other white paper, for writing purposes, we had in stock.

Q. And after they had bought it, did they present bills to you to be paid?

Mr. Roberts: He has not said they bought it. He said he bought it. Do not ask him what they bought.

The Court: I think that is a fair question. In other words, as I understood him to say in answer to you, that different persons who used the supplies—you asked him that question, who provided them, and he said those who used it provided it.

318 Mr. Roberts: No. I beg your pardon, sir. His last answer, when I asked him about typewriter supplies and ink, and all that sort of thing he said he bought it out of the fund. That was his definite answer.

The Court: I know. That was the final answer as to who ultimately paid for it.

Mr. Nelson: Question withdrawn, so as to save time. I will put another one.

By Mr. Nelson:

Q. If any one at the Federation Printing plant bought supplies for writing, typewriting or mimeographing, outside of what was in stock, and paid for it himself, did he afterwards present you with a bill, and did you pay the bill?

A. Yes.

Recross-examination.

By Mr. Roberts:

Q. I forgot to ask you one question. Did Mr. Stilson receive a salary from the Kova fund under your charge?

A. No. The Party pays him.

Q. Where was that fund kept that he was paid out of?

A. In the office of the Party.

Q. Where was that?

A. In Chicago.

Q. Do you know what his salary was?

A. I think \$21.

319 KSAVERA BALTRUNAS, having been duly sworn, was examined and testified as follows:

By Mr. Nelson:

Q. You are married, aren't you?

A. I am.

Q. What is your married name?

A. Mrs. Karosas.

Q. And you are known around the office of the Lithuanian Federation as Miss Baltrunas?

A. Yes, sir.

Q. How long have you been at the office of the Federation?

A. Two years and a half.

Q. And you have just recently been married?

A. Yes, sir.

Q. What is your position in the printing plant of the Lithuanian Federation, on Fifth Street above Race?

A. I am a bookkeeper.

Q. A bookkeeper?

A. Yes.

Q. Do you know the defendants, Stilson and Sukys?

A. I do.

Q. What is Stilson's position there?

A. He is Translator-Secretary.

Q. Of what?

A. Of the Federation.

Q. And what is Sukys' position there?

A. He is manager.

320 Q. Of what?

A. Of the Kova Printing place.

Q. Of the printing place, did you say?

A. Of the printing place.

Q. Do you know or did you know the editors?

A. I did.

Q. And what were their names?

A. K. Vidikas and J. W. Stalioratis.

Q. Were you present on the day when the Government agents came to the printing plant with the search warrant and made the arrest and took some papers?

A. I was.

Q. Do you know Mr. McHenry who had charge of the agents?

A. I do.

Q. He is the gentleman sitting back there against the railing?

A. Yes, sir.

Q. Did he say anything to you when he came into the place?

A. Yes, sir.

Q. What did he say to you?

A. He came into the office. He inquired for Stilson. The first thing he inquired for Stilson.

Q. The first thing he inquired for Stilson?

A. Yes, sir.

Q. And what did you say?

A. I told him that Stilson was not in.

Q. And was Stilson in?

A. Yes, sir.

321 Q. Why did you tell him that Stilson was not in?

A. Because Stilson had asked me if any strange people came in—

Q. Speak louder.

A. When Mr. McHenry came in he came to where I worked and he asked me if Stilson was in and I told him Stilson was out. Shall I answer the question?

Q. Yes. Go right on and talk to the jury.

A. Stilson asked me that in case some strange people come in, to tell them that he was out, because he had some kind of a report or something, I don't know what it was, to get out that day, and he said to tell people he will be in at three o'clock, he went out to lunch, and I did.

Q. At that time did you know who Mr. McHenry was?

A. I did not. I only knew it when he showed the warrant.

Q. After you told McHenry that Mr. Stilson was out what did McHenry do?

A. He then said that he is going over to Stilson's house and he inquired for the house address.

Q. Did you give him the house address?

A. I did.

Q. Then what happened?

A. Then he told me he has got a warrant for Stilson, a warrant of arrest, and Stilson walked up and owned up that he was Stilson.

Q. And where was that?

A. That was right at the office, the printing office.

Q. And did you hear conversation about what Stilson looked like?

A. I don't know what you mean.

322 Q. Did you hear any remarks about the personal appearance of Stilson by Mr. McHenry or any other of the Government agents?

A. I don't think I did.

Q. Who has charge of the editorial policy and the news policy of Kova?

A. The Lithuanian Socialist Federation Conventions.

Q. And in between Conventions who has charge of it?

A. The editors themselves in fact.

Q. Did Stilson have anything to do with directing what the editors should do?

A. He has not.

Q. Did Stilson have the right to hire or discharge them?

A. He has not.

Q. Did Sukys have anything to do with the hiring or discharging of them?

A. He has not.

Q. Did he have the right to say what should or what should not go into the paper?

A. He has not.

Q. What was Stilson's duty around the printing plant?

A. He was translator-secretary between the Socialist Party and the Lithuanian Socialist Federation.

Q. By "Socialist Party" you mean the National English Speaking Party?

A. Yes, sir.

Q. Did Stilson ever ask the editors to put anything into the paper called Kova?

323 Mr. Roberts: To your knowledge.

By Mr. Nelson:

Q. If you do not know, do not answer anything you do not know?

A. I don't know.

By Mr. Roberts:

Q. Do you know?

A. I don't know.

By Mr. Nelson:

Q. What was Sukys' duty around the printing plant?

A. He had to look to see that everybody had work to do there and he had to see that the paper got out on time and he bought paper and stock for printing of the newspaper and for the job prints.

Q. Were you appointed or elected to your position as bookkeeper?

A. I am appointed by the Executive Committee.

Q. Of what?

A. Of the Lithuanian Socialist Federation.

Q. Did Sukys have the right to hire or discharge you?

A. He has not.

Q. Who appointed or elected the pressmen of the printing plant?

A. Sukys, the manager.

Q. And who elected or appointed the compositors?

A. Sukys, the manager.

Q. Do you know who paid Stilson?

A. The Socialist Party.

Q. Which Socialist Party? Two have been mentioned. The English Speaking National Party and the Lithuanian Federation, which, I understand, is a branch of the National English Speaking

324 Party. Which party do you mean?

A. Stilson was paid by the Socialist Party, the English Speaking.

Q. The English Speaking?

A. National Party.

Q. The National Socialist Party?

A. Yes, sir.

Q. Did anybody else pay him anything for his work?

A. The Lithuanian Socialist Federation paid him \$4 a week.

Q. Since when?

A. I don't remember.

Q. So that he was paid his principal salary by the National Socialist Party?

A. Yes, sir.

Q. And he received in addition \$4 a week from the Lithuanian Federation, a branch of the Socialist Party?

A. Yes, sir.

Q. And were they his sole duties, to act as secretary-translator between the English National Party and the Lithuanian?

Mr. Roberts: If you know?

A. It was.

By Mr. Nelson:

Q. Do you know that to be the fact?

A. I do.

Q. Do you know how long he held that position?

A. I do not.

Q. Since you have known that he has acted as sort of a go-between between those two parties, for the sake of language differences, do you know whether or not they have been his sole

325

A. It was his sole duties.

Q. It was, you say, or was not?

A. That I know, as much as I know.

Q. Was there a typewriter in the office?

A. There was.

Q. How many typewriters?

A. One.

Q. Who used that typewriter?

A. Stilson. Vidikas used it sometimes and I used it.

Q. Anybody else?

A. Not that I know of.

Q. Was that typewriter locked up?

A. It was not.

Q. Who had the keys for that office?

A. The manager had a key, the pressmen had a key and the linotype operator and the editors had keys. I have one, and a man that used to work there had a key, that I know of.

Q. Did Stilson have a key?

A. I don't know whether he has it now or not. He had.

Q. Did he have a key?

A. He did.

Q. Did both the editors have keys?

A. No, the editor-in-chief had a key.

Q. When was the office opened?

A. Usually it was opened from about seven in the morning to about seven at night, but sometimes the manager or some of
326 the other workers would stay in longer.

Q. And have you seen people there at night?

A. I have.

Q. Have you seen people there at night when you were not actually inside the office?

A. I have.

Q. What sort of work did you do in this printing plant beside publishing, or did you do any other work beside publishing Kova?

A. I don't understand the question. Did anybody do it, or the plant?

Q. Did the printing plant do any other sort of printing work or press work besides publishing Kova?

A. Yes, sir.

By the Court:

Q. Job work? Did they do any job work?

A. Yes, sir, they did.

By Mr. Nelson:

Q. What sort of job work? English or Lithuanian or both?

A. We did mostly Lithuanian, but sometimes we had English work.

Q. And did the printing plant publish any other paper besides Kova?

A. It published New Era.

Q. At the time of the service of the search warrant do you know how many people were taken to the Post Office by the authorities?

A. The pressmen, the linotype operator, the compositor and Mr. Sukys and Mr. Stilson.

327 Q. Were you taken there?

A. I don't know what to say. I was not really taken there, but I went there.

Q. You went there?

A. With them.

Q. Were there warrants for all those people?

A. No, there were not.

Q. And do you know what became of the two editors?

A. I do not.

Q. You do not know what became of them?

A. I do not.

Q. But were they taken to the Post Office?

A. No, they were not taken there.

Q. Have you seen them since then?

A. I have not.

Q. Do you know where they are now?

A. I do not.

Mr. Roberts: You did not ask Stilson that, or Sukys.

Mr. Nelson: I will ask them.

Mr. Roberts: I do not think it is very material.

By Mr. Nelson:

Q. When they got you down to the post office,—I do not mean you, you went voluntarily, but after they got Stilson, who was under arrest on a warrant, and the other people who were not under arrest on a warrant, got them down to the Post Office, what happened that you know about?

328 A. I don't know what happened to them before I came to the room where the hearing was. I don't know what happened to them until I came into the room where the hearing was.

Q. Before the Commissioner, I presume you mean?

A. Yes, sir.

Q. Was there anything said to you about Stilson's guilt or innocence by any of the Government agents?

Mr. Roberts: I object to that as immaterial.

A. There was.

The Court: Of what value to us is that?

Mr. Roberts: I do not want to cut anything off, but——

The Court: What relevancy has it? I do not see that it has any.

Mr. Nelson: It was in the testimony yesterday, your Honor, when Stilson was on the stand, that certain things were said by the agent, McHenry, in regard to his guilt or innocence, and certain things were said by him as to what this witness said at that time.

The Court: Is this directed to the same talk?

Mr. Nelson: This is directed to the same thing, to see whether or not it coincides with what he said:

The Court: I think it is all right, then. If it has been gone into, we will hear it all.

Mr. Roberts: She said she heard nothing said about the matter until they went into the Commissioner's room. That was her last answer.

The Court. She said she did not hear anything until a certain time. I understand that Mr. McHenry testified to what took
329 place at that time. If he did, the defense may go into that.

By Mr. Nelson:

Q. Either before or after the preliminary hearing before the United States Commissioner, was there anything said to you by Agent McHenry in regard to the guilt or innocence of the defendants, Stilson or Sukys?

Mr. Roberts: I object to that.

A. There was.

Mr. Roberts: As to what was said after the hearing?

The Court: How is that germane to any testimony Mr. McHenry has given? Certainly nothing of that kind was said by McHenry. As far as I recall, there was no testimony given by McHenry on any such topic as that.

Mr. Roberts: There was not, no.

Mr. Nelson: That is true. I admit that. But I look upon it as germane in this sense, that it would tend to show that the Government officials were not positive as to the guilt or innocence when they made this arrest and when they got out the warrant, and that they were trying to fasten it on somebody, and they took this method of fastening it, and to show back of the whole prosecution the motive and intent and desire to accomplish a purpose.

The Court: Suppose you make your question direct, and we will exculpate you from the objection of being leading. Just bring out exactly what you want to bring out so that we can determine its relevancy. If there is a statement in your mind, just ask whether
330 or not that statement was made, and then we will know whether it has any relevancy or whether it has not.

By Mr. Nelson:

Q. Did Government Agent McHenry say to you, in the absence of Stilson, that Stilson said he did not print this mimeograph sheet, but that you did it?

Mr. Roberts: I object to that. It is in the absence of the defendant. That is a conversation with this young lady. It cannot possibly be relevant.

The Court: I do not see that the absence of the defendant affects it inasmuch as they are bringing it out, but I do not see its relevancy.

Mr. Nelson: It is to show to the court and jury that, notwithstanding the fact that the warrant was issued charging a man with a hor-

rible crime, especially at this time, when this country is at war, notwithstanding the fact that the people who swore it out were not positive who was guilty, and that they were using methods, good or bad, that is a matter of indifference, in order to find out who it was that really was guilty, notwithstanding they had already charged a man.

Mr. Roberts: If there was anything in this question, if the court pleases, that could help this jury to determine the guilt or innocence of these defendants, I would not object to it, but how in the world can that be relevant at all?

The Court: Supposing Mr. McHenry had said, "We have nothing really against this man, and I don't believe he is guilty at all," or suppose he had said "I believe he is guilty," what help would that be to the jury? They must determine his guilt or innocence under the evidence, and the opinion of some one is certainly of no value.

Mr. Nelson: He did not say "I believe." He made a positive statement.

Mr. Roberts: I object. You are testifying.

The Court: For the purpose of illustration, if he had gone the limit, and made any statement at all, either one way or the other, what possible help can it be to us here?

Mr. Nelson: It seems to me the jury ought to know it, to show what was in the—

The Court: He did state, as I recall his testimony, that the defendant Stilson had admitted the authorship of the blue sheet and had denied the authorship of the other sheet. Now, if McHenry said anything to this witness, or asked her any question that bears upon that question, it is perfectly admissible, and you may ask it, but if it merely indicates his state of mind as to the guilt or innocence of the defendants, it seems to me it would not be of any help to us at all.

Mr. Roberts: I do not want to shut anything out.

The Court: I do not, either. I am sure the District Attorney's office shares in that feeling, not to shut anything out that has any bearing whatever upon the real question involved. Even if it is not technically admissible, I would permit you to go into it, if it has any bearing. Mr. McHenry did make, as I understand it,

332 those two statements in his testimony.

Mr. Roberts: And Mr. Stilson confirmed it. Mr. Stilson said on the stand yesterday that he admitted the authorship of the blue circular, and he again admitted it here, but he denied the authorship of the other one. That is what McHenry said.

Mr. Nelson: But if your Honor will bear with me a moment, this witness is now on the stand, and I am asking her a question to corroborate and back up a statement that was made by Mr. Stilson yesterday with regard to certain actions and words by Mr. McHenry, and that testimony went in without objection from the Government, and it seems to me under that thought it ought to be allowed to go in.

The Court: Mr. McHenry testified as to a statement made by the defendant Stilson. If you are able to show by this witness that he made a statement to her of Stilson's statement to him which is dif-

ferent from that which he gave, you may show that, if that is your thought.

Mr. Nelson: No. I am not thinking of that at all. I am thinking about the testimony by the defendant Stilson in regard to what McHenry said to him, and I want to have that corroborated by a witness for the defendant Stilson.

The Court: If it bears upon the testimony of any witness on behalf of the United States or any witness on behalf of the defendant you may show it.

Mr. Nelson: That is my contention, sir. It bears on the testimony of——

The Court: Then, I will permit that question. I will
333 overrule the objection, and permit the question to be answered, because it does have a bearing on whether or not there was any inconsistency in his recollection of what was said by Stilson.

(Question repeated as follows:

"Q. Did Government Agent McHenry say to you in the absence of Stilson, that Stilson said he did not print this mimeograph sheet, but that you did it?")

The Witness: He said it in the room, when he came in, that Stilson was a coward, and "he is trying to blame everything onto you." He says, "You have done all." That is what McHenry said.

By Mr. Nelson:

Q. Do you know in whose name the bank account is kept?

A. I don't know what you mean.

Q. Do you know in whose name the bank account is kept for the printing plant?

A. It is kept in the account of the Kova Publishing Company.

Q. Is that the bank account for the paper, the Kova alone, or for the entire printing plant?

A. It is for the entire printing plant.

Q. And do the checks state anything else besides Kova Publishing Company?

A. It has Lithuanian Socialist Federation stamp on it. Otherwise we will not get it.

Q. You have already said who the editors were, have you not?

A. Yes, sir, I did.

Q. Who paid for the extra paper that might be necessary
334 that could not be had out of stock for writing, typewriting and mimeographing?

A. I don't understand the question.

Q. If you or the other employees at the plant wanted some paper to write on, to typewrite with, or some mimeographing paper, and it was not in stock, who bought it?

A. The manager, if the paper was used for the Lithuanian Socialist Federation purposes.

Q. And did any of the individuals ever buy the supplies themselves?

A. I don't remember.

Q. Did any of the individuals ever turn in a bill for supplies they said they had bought?

A. I don't remember.

Q. Is the defendant Sukys a member of the Executive Committee?

A. He is not now.

Q. And is Stilson a member of the Executive Committee?

A. He is not.

Q. Did the paper Kova hold any meetings or did the people connected with the printing plant hold meetings to determine the policy of Kova?

A. I don't know of any.

Q. What were your hours at the place?

A. From eight in the morning until six in the evening.

Q. Were you ever there at night?

A. I was sometimes.

Q. If any meetings had been held would you have known about them?

Mr. Roberts: I object to that.

335 Mr. Nelson: Question withdrawn.

By Mr. Nelson:

Q. Did you have to do with keeping the minutes of any meetings?

A. I had nothing to do.

Q. You did nothing but the bookkeeping?

A. I only did the bookkeeping there. That was all.

Cross-examined.

By Mr. Roberts:

Q. Who opened the mail that came in there?

A. The manager.

Q. And then he distributed it to whoever it belonged to, did he?

A. And he opened the mail that came addressed either to Kova or the Lithuanian Socialist Federation.

Q. And who opened the mail that was addressed to Stilson?

A. He opened it himself.

Q. Stilson?

A. Yes, sir.

Q. And did you do any correspondence for the Association?

A. I don't know what you mean.

Q. Did you write letters?

A. I did sometimes.

Q. Sometimes. Not often?

A. Not very often.

Q. Are you a stenographer?

A. No, I am not.

Q. Do you know of J. A. Tusan, or did you ever hear of him, or ever correspond with him?

336 A. I don't remember.

Q. Did you correspond with anybody at 18 Ames Street, Montello, Massachusetts?

A. I cannot recall.

Q. You cannot recall that?

A. No.

Q. I show you Government's Exhibit No. 27. Did you ever see that before?

A. I did.

Q. You did?

A. Yes.

Q. Where did you see it?

A. At the post office.

Q. At the post office?

A. Yes.

Q. After it was taken from the files of Kova?

A. I don't know where it was taken from.

Q. Who showed it to you at the post office?

A. Mr. McHenry.

Q. That is the yellow sheet?

A. I don't remember which sheet it was, but I remembered the heading.

Q. You mean the printed heading, not the writing?*

A. Just the printing.

Q. The printing on there?

A. Yes.

Q. Did you ever see it before that time?

337 A. I did not.

Q. You never saw it before that time. That is all.

Redirect examination.

By Mr. Nelson:

Q. By the way, did you print or mimeograph that circular?

A. I did not.

Q. Do you know who did it?

A. I do not.

Q. Do you know whether or not it was done at the printing plant?

A. I did not see it. I don't know.

Miss EDITH REEVES, having been duly sworn, was examined and testified as follows:

By Mr. Nelson:

Q. You are a stenographer in my office?

A. I am.

Q. You have been employed by me for six or seven years?

A. Six years.

Q. Have you testified in court before as a stenographer?

A. I have.

Q. What courts have you testified in?

A. In the Court of Quarter Sessions of Philadelphia County.

Q. What other court?

A. The Courts of Common Pleas of Philadelphia County.

Q. Have you been before Magistrates to take testimony?

A. Yes, sir.

338 Q. And before the Commissioner of the United States to take testimony?

A. Yes.

Q. You are a graduate of the Girls' High School?

A. The William Penn High School for girls.

Q. You took their course as stenographer and typewriter?

A. Yes.

Q. Were you present at a hearing before United States Commissioner Long of the defendants Stilson and Sukys on December 7, 1917, in the post office here?

A. No, it was the 15th of December?

Q. The 15th of December?

A. Yes.

Q. And at that hearing did you take the notes of testimony with regard to the testimony of a witness named Edward Haws, 1240 North Hazard Street, Philadelphia?

A. I did.

Q. I will read to you the testimony as transcribed by you.

Mr. Roberts: I object to that, of course. I have no objection to the witness identifying the notes for the present purposes.

By Mr. Nelson:

Q. Have you your notes there?

A. I have, yes, sir.

The Court: If it has been transcribed, let her state whether or not her transcript is a fair transcript of her notes.

Mr. Roberts: Certainly.

339 The Court: There is no use in having her take the time to read her notes.

Mr. Roberts: No, sir.

By Mr. Nelson:

Q. These are your notes of testimony?

A. Yes, sir.

Q. That is your typewritten transcript?

A. Yes, sir.

(Notes of Testimony just referred to marked for identification "Defendants' Exhibit No. 1, T. R. P.")

By Mr. Nelson:

Q. I read you beginning on page 2:

Mr. Roberts: I object to your reading that. If you want to offer it now, I have no questions. You have identified the transcript.

Mr. Nelson: I thought perhaps it would shorten it if I would read from her transcript and ask her if it was a correct transcript.

Mr. Roberts: I have admitted it was a correct transcript.

The Court: Just show her the notes and ask her if she transcribed the notes. Let her answer as to whether or not it is a fair and correct transcription of her stenographic notes.

By Mr. Nelson:

Q. Is this a fair and correct transcript of your notes?

A. It is.

Q. Have you compared it recently?

340 A. I have.

(No cross-examination.)

Mr. Nelson: I offer these notes in evidence.

Mr. Roberts: I object to them, if your Honor pleases. Your Honor, if you will glance at them, will see what they are. I object to the offer on a number of grounds. I need not state them in full. It seems to me the ground is obvious.

The Court: I do not see how you can possibly call that evidence, Mr. Nelson.

Mr. Nelson: I know, your Honor, ordinarily such evidence is introduced in order to discredit a witness, to show a variation between his words at the present time and at some past time.

Mr. Roberts: But this is not a variation.

Mr. Nelson: I say, that is ordinarily the purpose of such evidence.

The Court: You can show as a fact in the case that a witness of that name testified, and that he has not testified here.

Mr. Roberts: Surely, yes.

The Court: That is a fact. Whatever bearing it has the jury would have to determine, but I would permit you to show that.

Mr. Nelson: That is already on the record, that such a man testified, but it is not on the record in what capacity he

341 testified.

Mr. Roberts: That is already on the record, yes.

Mr. Nelson: Then, with regard to the original motion, I call attention to the fact that—

The Court: Let me inquire of you as to the practical bearing of this. You do not want to lose sight of the common sense of the proposition.

(Counsel conferred with the court at side bar.)

(After conference Mr. Roberts stated: "I will withdraw the objection. You will read all of his testimony, if you read any of it.")

Mr. Nelson: Yes, absolutely all.

Mr. Roberts: I have never seen it.

Mr. Gibbons: I will read the testimony of Edward Haws, taken before United States Commissioner Long, in the case of United States vs. Stilson and Sukys, at the preliminary hearing, on Saturday, December 15, 1917, at 10 o'clock A. M.

It reads as follows:

"EDWARD HAWS, 1240 W. Hazzard Street, Philadelphia, being duly sworn, testified as follows:

By Mr. Walnut:

Q. Mr. Haws, what is your business?

A. Typewriter salesman.

Q. How long have you been in the business?

A. Twenty-five years.

Q. What else have you done except act as salesman?

A. Employed in the mechanical department for twenty years.

342 Q. Mr. Haws, I show you a leaflet, the one that has just been identified, and this is a stencil copy of the same leaflet. Mr. Haws, upon examination of these two leaflets, could you state that they were made by the same typewriter?

A. Yes, sir."

Mr. Roberts: If your Honor pleases, it is agreed that those papers there referred to are Government's Exhibits Nos. 1 and 32, respectively, in this case, shown to that same man.

The Court: So that the jury may understand, one is the blue print—

Mr. Roberts: No. One is the one Mr. Slikas made, which is on the right hand side of the printed folder. The other was the original complaint or document. The disputed document and the document for comparison. Not the blue sheet.

The Court: Those were the two.

Mr. Roberts: The same two that were testified to yesterday.

The Court: One for comparison, the genuineness of which is not in dispute, and the disputed document for comparison.

Mr. Roberts: That is right.

Mr. Gibbons: And they were photographed together.

Mr. Roberts: Yes.

Mr. Gibbons (continuing): The cross examination reads as follows:

Cross-examination.

By Mr. Nelson:

342a Q. Just state why you say they were made by the same typewriter?

A. Well, the peculiarities of alignment.

Q. Will you point out some of the peculiarities of the alignment?

By Mr. Walnut:

Q. Mr. Haws, did you examine a typewriter that is in room 314?

A. Yes, sir.

Q. What kind of a typewriter was it?

A. Remington No. 10 model.

By Mr. Nelson:

Q. Will you point out some of the peculiarities of the alignment?

A. In the first line, the peculiar alignment of the capital "E" on each side of the letter "n." The capital "R" leans to the left and is light on the right hand side. The capital "I" leans to the left. The bottom of the small "n" in this second line is struck against another key or the type bar mashing on that particular point and is light on that particular side. The capital "S" is also light on the top. The capital "L" is leaning to the left also.

Q. All the capital L's?

A. All the capital L's, yes, sir.

Q. You testify then that this (Exhibit B) is a mimeographed copy that was made by the same machine that made this (Exhibit A)?

A. Yes, sir.

342b (Exhibit A is the paper which previous witness, Mr. Burak, identified as the one he received at Meade and South Streets, Wilkes Barre, August 26th, 1917.)

(Exhibit B is paper which witness, Haws, has identified from an examination as having been made on the same typewriter as Exhibit A.)

Q. You say from your experience in the business that the same machine that made Exhibit A was used to cut a stencil to make Exhibit B?

A. Yes, sir.

Q. And is it your opinion as an expert in your line and from your experience that there could not be two machines that made these two different pieces of paper?

A. It could be possible, but hardly probable, with the same peculiarities of the alignment.

Q. It is possible, but not probable.

A. Yes, sir.

By Mr. Walnut:

Q. Mr. Haws, are there many Lithuanian typewriters turned out?

A. I could not testify as to the number of them. I have seen quite a number of them, but I could not just say how many. We just simply handle what we sell here in the city and county.

By Mr. Long:

Q. How much experience did you say you have had?

A. Twenty-five years.

342c By Mr. Nelson:

Q. Can you tell from an inspection of these papers, Mr. Haws, what type of machine it was that made them, whether it was a Remington, or Smith Premier? What sort of machine made these?

A. Remington.

By Mr. Long:

Q. What model?

A. Remington, No. 10.

By Mr. Nelson:

Q. Why do you say Remington No. 10 and not Smith Premier?

A. Because they don't have the same shape type.

Q. You are positive they have different type?

A. Yes, sir.

Q. Would it be possible in making up a second hand machine to put Remington type on another make of machine?

A. No, sir."

JOSEPH DRIZA, having been duly sworn, was examined and testified as follows:

By Mr. Gibbs:

Q. Where do you live?

A. 520 South Second Street.

Q. What is your business?

A. Photographer.

Q. How long have you been in business there?

A. Eleven years.

342d Q. How long have you lived in this country?

A. About thirteen years.

Q. Are you a citizen?

A. Yes, sir.

Q. Do you know these defendants, Mr. Stilson and Mr. Sukys?

A. Yes, sir, I know them.

Q. How long have you known them?

A. About six years I have known them.

Q. About six years?

A. Yes.

Q. What kind of a reputation do they bear?

A. Which?

Q. Do you know what I mean by that?

A. I don't understand what you mean.

By the Court:

Q. What do people who know them think about them? Good men or bad men?

A. Very good men.

Q. Very good men?

A. Yes, sir.

By Mr. Gibbons:

Q. Have you ever heard about their being in trouble at any time?

A. No.

Q. Did you ever hear about their being in trouble?

A. No.

Q. Or being arrested for anything?

A. No.

342c Q. You never did?

A. No.

Q. You know both of them, you said?

A. Yes, but Sukys I know maybe for two years.

(No cross-examination.)

SYLVESTA SIRUTIS, having been duly sworn, was examined and testified as follows:

By Mr. Gibbons:

Q. Where do you live?

A. 1615 South 2nd Street.

Q. What is your business?

A. Tailor.

Q. Custom tailor?

A. Yes, sir.

Q. How long have you been in business there?

A. Over six years.

Q. How long have you been in this country?

A. About pretty soon thirteen years.

Q. Are you a citizen?

A. Yes, sir.

Q. Do you know Mr. Stilson?

A. Yes, sir.

Q. And Mr. Sukys?

A. Yes, sir, I do.

Q. How long have you known them?

A. I know Mr. Stilson about over five years.

342f Q. How long have you known Mr. Sukys?

A. Mr. Sukys I know about three years.

Q. What do people say about them? Have they a good reputation?

A. Positively. Honest people.

Q. Did you ever hear about their being arrested before or having any trouble?

A. No, sir.

Q. You never did?

A. No, sir.

Q. And they bear a good reputation?

A. Yes, sir.

(No cross-examination.)

PETER RUTKASKAR, having been duly sworn, was examined and testified as follows:

By Mr. Gibbons:

Q. What is your business?

A. Photographer.

Q. Where?

A. 801 South 2nd.

Q. How long have you been in this country?

A. About ten years.

Q. Are you a citizen?

A. I got my first papers.

Q. Do you know Mr. Stilson?

A. Yes, sir, I know him.

Q. And Mr. Sukys?

342g A. No, not Sukys.

Q. Just Mr. Stilson?

A. Yes.

Q. How long have you known him?

A. About four years.

Q. What kind of a reputation has he?

A. He has a good reputation. He is a good man.

Q. Do you see him often?

A. Yes.

Q. Do you know others that know him?

A. Yes, I know him.

Q. Do you know other people that know him, too?

A. Yes.

Q. Did you ever hear about him being in any trouble before, being arrested?

A. Never.

(No cross-examination.)

Mrs. J. SUKYS, having been duly sworn, was examined and testified as follows:

By Mr. Gibbons:

Q. Are you acquainted with Mr. Stilson?

A. Yes.

Q. How long have you known him?

A. About twelve years.

Q. Twelve years?

A. Yes.

342h Q. What sort of a reputation has he?

A. Well, the best I can tell.

Q. How long have you been in this country?

A. About twelve years. I have known him since I am here in this country.

Q. You have known him since you have been in this country?

A. Yes.

Q. Did you ever hear about his being in trouble before?

A. I never heard about it.

(No cross-examination.)

JOHN PETKUS, having been duly sworn, was examined and testified as follows:

By Mr. Gibbons:

Q. Do you understand English?

A. Not much.

Q. What is your business?

A. I am not in business at this time. For more than six years.

Q. What is your occupation?

The Court: He says he is not in business now.

By the Court:

Q. What was your business?

A. I am a shoemaker.

By Mr. Gibbons:

Q. And where do you live?

A. 232 North 11th Street.

Q. Do you know Mr. Stilson?

A. I know him.

342/ Q. Do you know Mr. Sukys?

A. I know him.

Q. How long have you known them?

A. More than six years.

Q. About six years?

A. Yes, more than six years.

Q. What kind of men do you think them to be?

A. Oh, I think I know they are good men. Good men. I know them to be good men.

Q. Do you see them often?

A. Yes.

(No cross-examination.)

Dr. B. M. AXELRAD, having been duly sworn, was examined and testified as follows:

By Mr. Gibbons:

Q. Where is your office?

A. 511 North 6th Street.

Q. Are you a dentist or a physician?

A. A dentist.

Q. How long have you been living there?

A. Since March 4, 1916.

Q. How long have you been in this country?

A. Since 1906.

Q. Do you know Mr. Stilson?

A. Yes, sir.

Q. And Mr. Sukys?

A. Not as well as Mr. Stilson.

342j Q. Mr. Stilson, then?

A. Yes.

Q. How long have you known Mr. Stilson?

A. Since March 4, 1916.

Q. 1910?

A. 1916.

Q. What reputation has he?

A. Very good.

Q. Is he well-known among the Lithuanian people, Lithuanian-Americans?

A. Yes, sir.

Q. Did you ever know him to be in any trouble at any time?

A. No, sir.

(No cross-examination.)

STANLEY JACAVICZ, having been duly sworn, was examined and testified as follows:

By Mr. Gibbons:

Q. Where do you live?

A. 3436 Walnut Street.

Q. What is your business?

A. Boiler maker.

Q. How long have you known Mr. Stilson?

A. Four or five years.

Q. Do you know Mr. Sukys, too?

A. Over three years.

Q. What kind of men are they?

A. Very good men. Honest.

343-4 Q. Good reputations?

A. Yes, sir.

Q. Do you know others who know them?

A. I know them.

(No cross-examination.)

ADAM GILDER, having been duly sworn, was examined and testified as follows:

By Mr. Gibbons:

Q. What is your business?

A. Shoe finding store.

Q. Where do you live?

A. 2636 East Lehigh Avenue.

Q. Do you know Mr. Stilson?

A. Yes, sir.

Q. Do you know Mr. Sukys? •

A. Yes, sir.

Q. How long have you known them?

A. About ten years.

Q. About ten years?

A. Yes, sir.

Q. What kind of reputations have they? What is their reputation?

A. Mr. Stilson?

Q. Yes. Mr. Stilson. What kind of a man is he known to be among your people?

A. Well, he is an honest man, so far as I know him.

Q. You have known him for ten years?

345 A. Yes, sir.

Q. How about Mr. Sukys?

A. Well—

Q. What did you hear people say about him?

A. I could not say nothing about him. He is an honest man so long as he has been in this country.

Q. How long have you been in this country yourself?

A. Thirty years.

Q. You are a citizen?

A. Oh, yes.

(No cross-examination.)

FELLDOR BUSHONG, having been duly sworn, was examined and testified as follows:

By Mr. Gibbons:

Q. What is your business?

A. Machinist.

Q. Where do you live?

A. 1011 Mount Vernon Street.

Q. You are a citizen?

A. A citizen.

Q. Do you know Mr. Stilson?

A. Yes, sir.

Q. Do you know Mr. Sukys?

A. Yes, sir.

Q. How long have you known these men?

A. I have known Sukys at least six years and Stilson about eight.

346 Q. What kind of men are they? What is their reputation?

A. He is an honest man, as much as I know.

Q. Have you seen them often?

A. Yes, sir.

Q. What do other people say about them?

A. As much as I know, everybody knows that these people are honest men.

Q. Of high standing, are they?

A. As much as I know.

(No cross-examination.)

ABRAHAM ZANAN, having been duly sworn, was examined and testified as follows:

By Mr. Gibbons:

Q. What is your business?

A. My business is shade cutter.

Q. Where do you live?

A. 627 Durfer Street.

Q. Do you know Mr. Stilson and Mr. Sukys?

A. Yes, sir.

Q. How long have you known them?

A. For about three years.

Q. What is their reputation?

A. Very good.

Q. Do you know others who know them?

A. Yes.

Q. Do you see them often?

A. Oh, yes.

347 Q. Did you ever hear about them being in any difficulty before with the law?

A. No, sir.

(No cross-examination.)

HELEN MUSLOSKY, having been duly sworn, was examined and testified as follows:

By Mr. Gibbons:

Q. Where do you live?

A. 42 North Dewey Street, West Philadelphia.

Q. Do you know Mr. Stilson?

A. Yes, sir, I do.

Q. How long have you known him?

A. About thirteen years.

Q. Do you know Mr. Sukys?

A. Yes, about two years.

Q. What is the reputation of these men?

A. Very good respectable men.

Q. Do you see them often?

A. Not very often.

Q. Do you know people who know them?

A. Yes, sir.

(No cross-examination.)

Mrs. N. STANLEY, having been duly sworn, was examined and testified as follows:

By Mr. Gibbons:

Q. Where do you live?

348 A. 42 North Dewey Street.

Q. Do you know Mr. Stilson?

A. Yes, sir.

Q. How long have you known him?

A. Two years.

Q. Do you know Mr. Sukys?

A. About the same. Two years.

Q. And have they good reputations?

A. Very very good.

Q. Do you know other people who know them?

A. I have lived next door to Mr. Stilson for about two years.

Q. You live next door to Mr. Stilson?

A. Yes, sir, and I also lived with Mr. Sukys, and they both have got very very good reputations, and well liked by everybody.

(No cross-examination.)

Mrs. VERA SHOLL, having been duly sworn, was examined and testified as follows:

By Mr. Gibbons:

Q. Where do you live?

A. No. 31 North Dewey Street.

Q. Do you know Mr. Stilson?

A. Yes.

Q. How long have you known him?

A. About two years.

Q. Do you know Mr. Sukys?

A. About two years.

349 Q. Also?

A. Yes, sir.

Q. You live near them, do you?

A. No, not near them. I live near Mr. Sukys.

Q. Mr. Sukys?

A. Yes, sir.

Q. What reputations have they?

A. Very good.

Q. Very good reputations?

A. Yes, sir.

Q. Do you know other people who know them?

A. Yes, sir.

(No cross-examination.)

Defendants rest.

Testimony closed.

At 11.55 A. M. Mr. Roberts began his argument to the jury, and concluded at 12.45 P. M.

At 12.45 P. M. Mr. Nelson started his address to the jury.

At one o'clock P. M. a recess was taken until two o'clock P. M.

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2 P. M.

Present: Parties as before noted.

At 2 o'clock P. M. Mr. Nelson resumed his argument to the jury, and concluded at 3 o'clock P. M.

At 3 o'clock P. M. Mr. Roberts began his argument in rebuttal to the jury, and concluded at 3:09 P. M.

The Court: Gentlemen of the jury: If you are charged this afternoon it will be necessary for you to be kept together until you have rendered your verdict, and as some of you may have made engagements in the expectation that you would be relieved at the usual hour, half past three, I would like you to confer together and let me know your wishes as to whether you would prefer to be charged this afternoon, and dispose of the case to-day, or whether you would prefer to have the charge deferred until to-morrow morning. I do not mean that you should decide it by a majority vote, because some one or more of you may have made an engagement which is important, in the expectation that you would be relieved shortly after three o'clock, and it might put you to considerable inconvenience to break your engagements. So that if any of your number are so situated that it is not convenient for you to remain to-day and dispose of the case to-day, it may go over until to-morrow, but if you all prefer to dispose of it to-day, I will charge you, and commit the case
351 to your hands. You may just talk it over among yourselves and let me know what your conclusion is.

(The foreman conferred with the jurors.)

(After conferring):

The Foreman: Your Honor, I find that the jurors are all willing, and wish to stay and be charged.

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Table of Government's Exhibits.

Ex. No.	Title.
1.	Neikime leaflet (Cut 1).
2.	Translation, Let us not go to the Army.
3.	Kova, 7-20-17, 2 editorials Apzvalga (Cut 2).
4.	Translation, For those called to the Army.
5.	Kova, 8-10-17, captions & article, S. S. K. (Cut 3).
6.	Translation, Deceiving those called to war.
7.	Kova, 8-24-17, Correspondence article Brockton, Mass.
8.	Translation, Brockton, Mass.
9.	Kova, 8-31-17, Januska signed article V. Priezada.
10.	Translation, "Deceitful Promises."
11.	Kova, 8-31-17, Stalioraitis article K. I J P (Cut 6).
12.	Translation, "The war and Its Causes."
13.	Kova, 9-7-17, News Article Patriotu M. Paroda (Cut 7).
14.	Patriots Military Parade. Translation.
15.	Kova, 10-5-17, Captions & Article Idomus A K Laiskas (Cut 8).
16.	Translation, An Interesting Letter.
17.	Kova, 10-19-17, Editorial Apzvalga Kova (Cut 9).
18.	Translation, Kova & Censorship.
19.	Kova, 6-1-17, Editorial Delei (Cut 10).
20.	Translation, "Concerning the Military Registration."

And News.

21. Kova, 6-15-17, Caption Slackerismo Gaudymas (Cut 11).
22. Translation, "Capturing Slackers."

Intent.

23. Gray Circular.
24. Translation of same.
25. Kova, 6-1-17, Stilson signed articles.
26. Translation of same, Anti war Manifesto & Resolutions.
27. Yellow copy of Neikime, I Kariumene Leaflet.
- 353 28. Sworn P. O. Statement, 10-5-17, Kova (English).
29. Typewriter, Remington No. —.
30. Horton book of photos.
31. Mimeograph Machine.
32. Slikas Standard.
33. Stencil Sheet.
34. Allard sample.

EXHIBIT No. 2.

"Let Us Not Go to the Army.

FELLOW WORKERS: Before us stands compulsory conscription. Those who are called, if they are fit, and are not otherwise exempt, will be taken into the army by force. Those called to the army will

not be allowed to think, but will be forced to obey the orders of their superiors.

There has come an era to this country when the rights of the citizens mean nothing. The working men's press, speaking the truth, is constrained in all possible ways; anti-war meetings are prohibited; men preaching most truthfully the causes of the war and not willing to submit to the tyrannical laws are being thrown into prison. Under these circumstances, it behoves us, to address you fellow workers by these proclamations.

War, compulsory conscription and laws of all kinds restricting the rights of the working men are being passed because our
 354 capitalist exploiters desire to make more profits. The whole present world war is nothing more than the cruel play for the purpose of gaining wealth from the lives of the people of their own countries. While the working men of the different countries are being torn to pieces on the field of battle and are dying most horrible deaths, at the same time the exploiters, wading in the blood of the slain working men, fill their pockets with shining golden coins. The working men shed their blood, lose their lives and their exploiters find for themselves mountains of gold in the blood and shattered humanity. It is evident that it is necessary to employ weapons, ammunition, food and clothing for the soldiers in war. For all of this the governments pay the capitalists well. War brings death to the workingmen and profit to the capitalists.

This war was declared against the will of the people; it is being carried on for the profit of the exploiters to the utter ruin of the people. The compulsory conscription law was enacted against the will of the people and the protests of the intelligent working men. Notwithstanding the fact that the law has been enacted the duty of us working men is: to uncompromisingly demand the immediate termination of the war and the repeal of the compulsory conscription and other kinds of tyrannical laws.

Since the government has enacted the compulsory conscription law against the will of the people, a protest alone against this law is
 355 insufficient. To such a law enacted against our will and the Constitution of the United States, we must not submit.

Those who are called to the army should endeavor by all possible means to exempt themselves. If that is impossible and if it is impossible to escape then, rather than enter the army—go to prison. To the intelligent working man the garb of the convict is by far more honorable than the uniform of the murderous soldier.

Fellow workers, let us not allow the exploiters to convert us into the murderers of the working men of other countries.

Down with the war and compulsory conscription! Long live peace and the will of the people!

(Signed) PEACE DEMANDING WORKING MEN.

A Few Suggestions.

1. Those who have registered should immediately find out from their Exemption Board whether they are called to the army. 2. If

he who is called has not his first citizenship papers, it is then necessary to make a claim for exemption. Those not having first papers will not be taken into the army if they make claim. 3. Citizens and those having first papers, if physically fit and unmarried and not having anyone dependent upon their labor (which fact must be positively proven), without waiting for anything should immediately abscond, otherwise they will be taken into the army."

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EXHIBIT No. 4, GOVERNMENT'S.

"Editorial.

For Those Called to the Army.

It has already been set forth in the "Kova" how the English Government is treating the conscientious objectors against war. At first they punish them severely, even threatening them with being shot. Later, however, they relaxed, and now certain opponents of war are released entirely from military service while others are required to perform other war duties; those who do not agree to perform war work are usually put in prison. Recently articles appeared in the newspapers to the effect that England is also exempting from military duty those Socialists who show that their principles forbid them to kill their brothers, the workingmen of other countries.

America's bourgeoisie newspapers write that England has made a mistake in exempting the conscientious objectors from military service. They say England would have done better if they had sent the opponents of war to the war front with the rest. England has set a bad example to America's "slackers." (Those not desiring to go to war.)

It is stated that in England there were very few conscientious objectors against war, nevertheless, they have caused the government and the military authorities great annoyance. However, in England only those who can prove that they were opposed to war before the enactment of the compulsory military service law, are exempt from service in the Army. Aside from other questions, nearly every "slacker" in England is asked: "Would you not defend your mother, if someone attacked her?" This is regarded as a very clever question by which it is possible to confuse a large number of "slackers." It is known that in America likewise very similar clever questions will be asked, but, we think our Comrades will know how to answer them with proper Socialistic arguments.

Advice to Registrants.

In various places there have been established so-called Exemption Boards (Bureaus of exemption). These exemption boards announce to registrants their serial number; and the registrant should demand such notice.

The final arrangements are being made in Washington for the drawing of the members by lottery. Those whose numbers are drawn will have to serve in the Army and will immediately be called by the District Exemption Board; in addition to this, their numbers will be published in the local newspapers. The drafted men will first be examined physically (medically) to ascertain whether they are fit as soldiers. Every one must report for physical examination. Those who do not report for physical examination regardless of anything will be drafted into the Army.

358 Only after the physical examination will it be possible to claim on proper grounds, exemption from the Army and war. However, such claims can only be submitted to the local Exemption Boards within a period of ten days after the notice to appear. Those who do not file any claim within that ten days will be drafted into the Army, if fit. No attention will be paid to any later claims.

Claim should be made on the proper blanks furnished for that purpose and must be witnessed by a Notary.

If the local Exemption Board should set aside the claim, it will be possible to appeal to the District Exemption Board. Finally, it is possible to appeal to the President of the United States. The claim must be made in the English language. There are organizations in various places which give advice. Those who desire to make claims to the Exemption Boards, it is advised, should in advance obtain the information from such organizations, from a conscientious Socialist lawyer, or from a Socialist agitator conversant with this matter, or even from the opponents of war.

Those who have families, the fact that they have to support the same is sufficient grounds for exemption. Socialists, even if they should give other grounds for exemption, are always bound to mention that their principles forbid them to go to war or into the Army.

359 There are some who say they will not go to explain nor will they go into the Army. The government has decided to punish such severely."

GOVERNMENT'S EXHIBIT No. 6.

Deceiving Those Called to War.

How the Exemption Boards Treat Those Called for Military Service.

One Philadelphia comrade brought to the "Kova" Editorial Office a notice from the Exemption Board to appear for a physical examination on August 13th. The notice was written and mailed August 3rd. It stated: If you desire to submit to the Exemption Board any claims for exemption from military service, such claims must be submitted to the Exemption Board within 7 days from the receipt of this notice.

From August 3rd to the 10th there happens to be 7 days; that is to say, the period for filing claims terminates 3 days before the physical examination takes place. The terms of the Conscription Law

provide that it is first necessary to pass a physical examination and then to make claim for exemption.

Since, however, in the mentioned notice to the comrade it was stated that only for a period of seven days after the mailing of such notice should claims for exemption from military service be
 360 filed, this comrade hastened and went to his Local Exemption Board and asked for the proper blanks upon which claims for exemption were made.

The Board told him that they "have not" yet any of these blanks; that they are not yet accepting claims for exemption; that they will begin to accept them only on August 9th, that is, only one day prior to that day mentioned in the notice as the last.

That means that the Boards have so fixed up things that those lacking the required cleverness might not have an opportunity to claim exemption; that these, who up to the 7th day after the receipt of notice were unable to file their claims, should not hope any further for exemption.

The Boards know that in the Regulations there is a provision allowing 7 days after the physical examination for claiming exemption. However, in their notices they do not mention this; they desire people to misunderstand this so that after the physical examination it will be impossible to file exemption claims.

It is unnecessary to consider such complexities and one should wait for the physical examination. If thereupon a man is considered physically fit for the army, then he will have 7 days' time for the purpose of filing the customary claim with the Exemption Board for the purpose of exemption; within 10 days after the presentation of this
 361 formal claim it is necessary to set forth on the proper blanks witnessed by a notary the grounds on which you claim exemption.

GOVERNMENT'S EXHIBIT No. 8.

Brockton, Mass.

"New Branch" Agitation.

After the registration here people quieted down and thought that things would simply blow over, but now the conscription "draft" has begun and a new agitation has arisen.

A full sized group has already left the city, a few industrious Socialists likewise have gone, some of them immediately after the registration, others immediately before the "draft"; however, those who remained there and are called for service in the Army are agitating by all kinds of means; some by hastening to lawyers and bringing them money, and others are looking for aid elsewhere.

A few have been examined and found unfit, but a few have been found fit, among whom there is one Socialist, Comrade V. A. Pundis, and from what I heard, it is difficult to get away from. He submitted his claim for exemption but I will announce later to the Kova's readers as to the result thereof. Two Socialists, Comrades St. A.

Milecius and P. M. Balsys, absolutely refused to undergo a physical examination and they answered notices with letters of the following nature:

362 "SIR: I received your letter of June 30, 1917, wherein you urge me to undergo a physical examination, in order to ascertain whether I am fit for the Army.

1. My convictions are against all methods of murder, for that reason I am opposed (on account of conscientious motives) to entering a homicidal war.

2. I came to America with the idea that it is a free country, wherein I could live happily; in reliance thereupon I renounced my allegiance to Nicholas II and his Dynasty and all of his laws, but I did not absolutely renounce allegiance to the new Russian Republic. Therefore I do not see any reason why I must be examined, as I know no power in existence can make a soldier of me.

On account of the foregoing reasons I will not submit to an examination.

(Signed)

STANLEY A. MILCIUS.

"DEAR SIR: Your request commanding me to appear before your doctors for the purpose of ascertaining whether I would be fitted to be a legal homicidal soldier, was received August 9th, and I herein answer the same.

This is it:

I refuse to fulfill your demand, i. e., to appear at the fixed place and time for the purpose of ascertaining my health, on account of the following reasons:

363 1. I have no calling to be a murderer-assassin of any individual, regardless of the country, nation or race to which he belongs.

2. I am deeply convinced that I am needed for the Army of the United States, not for the purpose of defending this country's honor or freedom, for which purpose I would not hesitate to shed blood, and even lay down my life, but for the purpose of accomplishing the object of covetous imperialistic capitalists.

3. Not being a citizen of this country I feel that I have the moral (that means the legal) right to refuse to have you impose upon me a military obligation by force.

On account of the foregoing reasons I refuse to fulfill your demand.

Respectfully,
(Signed)

FR. BALSYS."

GOVERNMENT'S EXHIBIT No. 10.

(Deceitful Promises.)

When the sword of war began to knock at the door of the United States, the munition trust rubbed its hands and waited for orders of larger defensive weapons and ammunition. The capitalists' Press,

364 inflamed by "patriotism" published all kinds of enticing reports in order that the war might be more quickly declared, that the golden era might begin.

The Socialists attempted to force the sword of war aside in order that the United States might release the people from inquiry, bloodshed and death; they pointed out, that such funds are necessary only for the pockets of capitalists, they explained what damage war brings to mankind, they arranged anti-war demonstrations.

But against the Socialists there was a greater effort, the capitalistic government, the dollar, which in modern times overcomes everything and the un-intelligent workingmen. The worshipers of war are thirsty for the dollar; the Democrats, the Republicans and all others saw profit for themselves out of the war, likewise our fellow countrymen. These latter having but small influence among the people but desiring to show that they are at the same time patriots with the munition patriots, that they are business men not workingmen, sent to the President of the United States letters and telegrams of loyalty, that if the President should declare war then they would support him and fight. When the Lithuanian Socialists protested against war, their fellow countrymen protested against the Socialists and even arranged a meeting at South Boston, Mass.

The protests of the Socialists availed nothing. War was declared for the democracy of the munition dealers; soldiers are being sent to France; a compulsory military conscription was estab-
365 lished and conscription under the Army already begun.

Among the first called were our fellow countrymen. It was thought that as they were advocates of war that when they were called to fulfill their promises that they would fulfill them, for not only did they promise but also through speeches, lectures and discussions, they explained the benefit of war and maintained that the President having declared war the unfortunate nations would be freed.

Our drafted compatriots likewise claimed exemption from military service, not because of envy but because it was desirable that they be exempted. But let this be a lesson to you—not to force upon others what you, yourself, do not desire. If you do not desire to go to war then why do you tell others to do so; Why do you send others into the slaughter-house of war?

If you send others, and do not want to go yourselves, you become traitors. The workingmen having seen your deceit will not place confidence in you, so thus it is with our compatriots. But it is not otherwise with American patriots; and they do not want to go to war to lay down their heads; therefore, they are pushing away as much as possible from themselves the aliens into the Army, in order that the aliens may fight for them, the people of other nations not citizens of America. They are making every possible effort that the
366 aliens be taken into the Army and placed in the front in order that the first bullets may pluck their undesirable elements, and among these undesirable elements are our compatriots; therefore it is dangerous to them.

Only the nation of Socialists is growing through all these storms and has for its motto: Workers of the World unite!

(Signed)

N. JANUSKA."

GOVERNMENT'S EXHIBIT No. 12.

The War and Its Causes.

J. V. Stalioraitis.

The fourth year of war has begun. The fourth year of Germany's Austria's Bulgaria's and Turkey's fight for their 'democratic rights'. The fourth year of England's, France's, Russia's and other allied nations' war for "Democracy." The fourth year in the course of which not only all Europe has been converted into human vegetables, insensible to poverty, suffering and death, raging with unspeakable madness in order that "Democracy" may be established on earth, likewise the hearts of our Americans have been softened and we are entering the conflagration of that fire and blood, in order to put all our efforts in that "Honorable War for Democratization."

Comrade reader! Stop just a moment and consider whether, in fact, it is so that it is our fourth year, as our "good masters" 367 each day explain these matters in schools, from rostrums and pulpits, likewise by the aid of the press. Is it true that all of Europe, and now the United States of America, are fighting for democracy?

Every individual, who thinks with his head and does not merely use his lungs, knows that this is the rawest kind of a lie; that all this talk about democracy is simply smoke blown in the eyes of the workingmen, in order that they may be unable to see the truth and not declare war for a real democracy.

Do you believe that Germany is warring in defense of its democracy, when in Germany you could not find even with the aid of a lamp such a thing in daylight? Do you believe that France is fighting for Democracy, when even today France's sword is besmirched with blood of her slaves in Africa? Can you believe in England's war for democracy, knowing that England is killing and forcing into prison hundreds, even thousands of fighters for democracy in Africa, India and Ireland? And perhaps you still believe in the Democracy of Russia under the former Czar and his advisers whose war plans with the allies "for Democracy" even today the social patriot--Dictator Kerensky is attempting to accomplish?

And how about the United States? They likewise say that they are warring only for Democracy, but do you believe that? Do you believe in the words of their representatives: Also then when the

United States Government represses by prisons and by bullets 368 its citizens asking for more bread for their little children; do you believe in this country's war for Democracy, when right here under your nose the police bludgeons constitute the highest law, when speakers proclaiming real Democracy are forced into prison and newspapers for the very same "offense" are suspended. No!

you, if you are not slaves, but men worthy of bearing the name, you can not believe that! You should understand that people, who do not recognize democracy cannot fight for it. Therefore, if this frightful slaughter is being carried on not for Democracy, then what causes evoked it?—the reader will perhaps ask.

In order to explain truthfully one or another of our aspects of life we must explain from a general economic foundation, all other explanations will be more or less misleading. If the economic surroundings of life produce work for mothers and children, the army of the unemployed, suffering and prostitution then there cannot be doubt that these very same causes produce wars also.

All you who will read this newspaper perhaps already know that the whole world is divided into classes; in other words. In our humanity there is a class of people who throughout their entire existence neither create nor produce anything of benefit to all others, yet who possess all that is beneficial to others, and another claims of people who work all their lives and have nothing.

339 Every living being has a natural instinct,—to live better and not worse; to have more of everything and not less. As the working class wants shorter hours of work, more pay, and better equipped machines and places to work, likewise the class of the idle capitalists want to have more profits.

The capitalists having in their hands the machinery for manufacturing can very easily carry out their own wishes, for the working man forced by starvation has to go and implore the capitalists to allow him to make use of "his" machinery, without which the workingman cannot work.

The capitalist taking advantage of this opportunity, proceeds toward his goal, i. e., making of more and more profit. In order to make more profits he forces his working men to labor long hours for the smallest wage.

The working man receiving small pay, i. e., not receiving full compensation for their work, can not buy all of those products which they create by their work. For if we recall that there is only a small handful of capitalists, and millions of workingmen, then we come to the conclusion, that the purchasers of the manufactured products are the workingmen and no others.

If you should clothe every capitalist with ten suits, cover him over with gold chains and insert in him a stomach as large as the biggest bag, even then they could not use all that we have created by our labor. Since the workingmen, the greatest buyers,

370 do not receive such wages as to be able to buy all the manufactured products, then the effect of that is as follows: There accumulates for a certain time so much of unpurchased products, that it becomes necessary to do one of two things; either to shut down the industries, or to find countries where the industry has not yet reached such a high degree of development, a new market for the sale thereof.

Since only some of the other of the capitalists of one or another country search for similar foreign markets, then that is only half

of the trouble; but to-day not only the capitalists of Europe, but of America and even of Asia are looking for foreign markets.

You perhaps well understand that the meeting of the capitalists of the different countries in one and the same market place produces among them competition and this already leads to war.

The capitalists of the different governments, forced to the wall by the economic surroundings of life, in order to overcome and force their competitor out of position, compel their governments to accomplish for them this agreeable task by the aid of war. And, the present universal war is nothing more than a war for the markets of the world.

The talk about democracy, about civilization, about the freedom of the smaller nations and international law is nothing more than the blowing of smoke into the workingmen's eyes, in order that they may not see the truth.

371 In this way there is no more democratization of humanity nor morality than in the war of two dogs fighting for a bone. When two dogs are quarreling, being unable to divide the bone, so likewise England and Germany fight, not being able to divide up the world's markets. All of the other nations partaking in the present war are anticipating the scraps falling from the table of war.

Our United States of America is playing the part of the third dog in this war. When two dogs are fighting, not being able to divide up their bone, then there is an opportunity for the third dog to steal that bone.

So in this war, when England is fighting with Germany, not being able to divide up the world's markets, then the United States capitalists seized all of these markets and nor their task is to further weaken their competitors, in order that at some certain time they may assure themselves of the control of those markets. And the longer this war continues, the weaker will become their competitors and the United States conducting the entrance of the capitalists of this country into the flame of war not for the purpose that it may sooner extinguish it, but for the purpose that it may continuously burn little by little.

The capitalists of America desire that this war should last as long as possible and for the reason that they have the greatest profit from this war as well of the requirements of war, as food, clothing,

372 weapons and munitions are prepared and furnished by the American capitalists, and they charge for them prices double and even triple of those of ordinary time. The United States stands on the allies' and not on Germany's side for the simple reason that American capitalists, being unable from the beginning of the war to loan money to Germany or to both sides, having loaned the allies lot of money.

If the allies should be defeated, there is no doubt that revolutions would take place in their countries, and that practically means that the loans would be lost.

For this reason the American government, which is nothing else than the Wall Street Executive Committee fulfilling the capitalists' decisions, has declared war for the reason that it may continue

longer and finally overthrow Germany. If it happens that these plans of the Capitalists will be established, then by one charge several rabbits will be shot.

As you see, then, we American citizens are forced to go and fight that our capitalists may have more profit. We have to fight, in order that capitalist may be able to transport to Europe food products prepared by us, and we are to have the opportunity to starve.

Is that just? If it is so, and some of you say that to fight and be killed for the capitalists' interest is right, then go and fight.

373 But we who do not agree to fight for the purpose of having an opportunity to starve must explain how we would stop that slaughter, much more so how the sword of war is to be utterly eliminated from this earth. The people who have more audacity than reason or shame still say that by means of war we can avoid international laws *pr* permanent disarmament. These are quite as absurd, just as superficial treatment of an injury which leaves an internal infection.

We say that if you desire that people should not be ill remove the diseases that produce the causes. If you desire that war should be finished remove the causes which produce war. As you saw in the beginning of this article the fundamental cause of all wars is the fact that the entire world is divided into classes with separate economic interests. In order to destroy war producing causes it is necessary to destroy classes throughout the world and for the purpose of reaching that, there is only one means, that is the taking of nature's wealth and means of work and travel from the private control of the capitalists, into the hands of the people.

But the mentioned control by the people will be called Socialism. Do you fear it?

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GOVERNMENT'S EXHIBIT No. 14.

Patriots' Military Parade.

The dollar patriots last Saturday afternoon arranged a large farewell parade for the drafted soldiers going to Europe. The parade, however, was far from being as large as the Municipal authorities desired to make it. The capitalistic newspaper announced it several weeks in advance; policemen visited the various residences and by either good or bad means tried to obtain the largest possible number of people to participate in this demonstration. Now their newspapers "are bluffing" that there was a crowd of 500,000 spectators on the streets along which the parade marched. In fact only around City Hall and Market and Broad Streets were there large crowds of skylarkers. Furthermore, on Saturday afternoons, outside of this fact, it is customary for large crowds to be in these places. Impartially speaking, in a large number of places so to speak the parade was not even noticed.

Three mothers fainted as they looked upon their sons being drawn by military force into the jaws of war; they were conveyed to hospitals. Indeed as to the weeping of women whose husbands were

forced to go as cannon fodder, not a single bourgeois-e newspaper mentioned a thing.

But it is impossible to mention this incident. The demonstration having departed from the center of the city, thousands of people left

City Hall for Socialist Headquarters. Some thought that

375 there would be made a public demonstration. It happened

however altogether otherwise. The crowd having assembled the Socialist speakers began to speak from the steps of the head-

quarters and their words found most fitting approval by the crowds.

At the same time the venders of Socialist literature were not asleep.

It is said that it is a long time since they sold so much literature as

they did this time. They sold all that they had of the "People's

Press," the local Socialist organ; Socialist brochures and journals

were grabbed up by the crowd like fresh hot cakes. Of course, the

policemen were occupied in preserving order for the purpose of a

demonstration and for this reason they did not stick their beaks here.

The parade started at two o'clock in the afternoon. An electric

wire from the Liberty Bell was extended from Independence Hall to

City Hall where it was attached to a real bomb. The bell having

been struck with a mallet the bomb exploded and that was a signal

for the demonstration to start.

GOVERNMENT'S EXHIBIT NO. 16.

An Interesting Letter from an American Soldier.

A former member who has served his term of enlistment in the

American Army, has written a letter to Comrade J. Baltru-

376 saitis (at Pittsburgh), which letter Comrade J. Baltrusaitis

has sent to us and an excerpt of which we publish herein.

The mood of the soldiers has no definite tone. Americans "of

better blood" who are training to become officers—"U. S. Training

Camp"—appear to be more militaristic for they understand the word

"patriotism" as ardent Catholics understand the word "God." There

are to a certain extent reasons which inflame in them the patriotic

mood. The mayors of cities, the Governors of States, and other

"noble citizens" of America frequently give forth patriotic, sweet-

tongued oratory. They praise their deeds, exalt their service and

promise to write their names into the history of the United States if

they heroically die in war for their country, for her freedom!

Soldiers of my rank, who entered the war, impelled by hunger

or forced to by the Government, encounter altogether different con-

ditions. The brutality of the superiors forced us to become "pa-

triotists" and that brutality tames one to obedience, humiliation and

fulfillment of the commands of the superiors. For that reason a

large number become half-witted, hopeless, indifferent, disregard-

ing their fate and everything else. They do not worry about the

present and what kind of a morrow awaits them does not concern

them, and they refuse to discuss it!

I think it will be interesting for you to know how shamelessly and

377 immorally the recruiting authorities of the Army conduct themselves at the recruiting station in the city of Chicago.

When the government had announced registration day, June the 5th of this year, a large number of Italians, Greeks, Serbians, and young men of other nationalities went "to register." Those foreigners did not understand for they did not know what was the true meaning of registration. Thus they were registered but they were forbidden to return home: all of them numbering about 200, were transported to Jefferson Barracks, Missouri, and thence transported to the Army posts. Then these "Hunkies" and "Dagoes" understood that they deceived them, but it was too late to seek assistance. At their complaints the Army officers laughed saying: "Eh, crazy Wopps, we can't help it; it's too late now." Wonderful system!

At another time I will note something new. I request you to write. Your letter cannot cause me any trouble for if the Government should find anything illegal in the fact that we have corresponded, it could do no more to me than to throw me into prison or kill me, but since I am not doing anything against the Government either secretly or openly, I therefore have no reason to fear to correspond with whom I desire.

Yours,

— — —."

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GOVERNMENT'S EXHIBIT NO. 18.

"Kova and Censorship.

Postmaster General Burleson says that the Government will not destroy all Socialist newspapers; only those will be destroyed that point out that American Capitalists have drawn this country into war; those who write that the American Government is doing as the Wall Street financiers dictate to her; those who shall criticize (the imperialistic) policies of America and her allies; who interfere with the compulsory military conscription or who put obstacles in the way of the purchase of "Liberty Loan Bonds." Therefore, the Socialist newspapers are threatened with persecution and being compelled to close up until the end of the war simply for those things which each and every Socialist newspaper should explain. This war is imperialistic. Only by explaining imperialism is it possible to truthfully explain the present day capitalism; without imperialism it is utterly impossible to describe the present day of capitalism. Not to explain these things in that light would mean the leaving of the working-men's mind open for filling with poisons of the Capitalistic Press; it would mean permitting the greatest imperialistic deception and error to pass unheeded,—namely that this war is being carried on by "democracy" and the "defense" of the smaller nations.

379 If any Socialist newspaper should heed such regulations of the Postmaster General, then it could not rightly explain the most important thing of this moment—the meaning of Russian revolution—its consequences and extent. It would be impossible to materially or morally support this agitation.

It therefore is plain that the Socialist newspaper which would so degrade itself would be worthless and would become ordinary, suitable filth for the government. The intelligent workingmen would doom it as a traitor of its revolutionary honor. The editorial office of the Society's organs for that reason will not heed these governmental restrictions, and will openly explain to the people as to the imperialistic robbers and their agents—the Government—policies and their plans in this war. If the Government should place its heavy hand upon the L. S. S.'s organs, if they should close them up, then we will know that we have done our duty and did not sell our revolutionary honor in vain and that we did not lower our red banner before the Government's threats. If they close our organs the members and other intelligent workingmen will look for other mediums of agitation.

The war will not last forever. After the war our organs will again be able to rise up with honor.

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GOVERNMENT'S EXHIBIT No. 20.

Editorial.

(Concerning the Military Registration of June 5th.)

On June 5th, throughout the entire country, there will be a Military registration of all men between the ages of 21 years and 30. Upon registering, it will be necessary to answer twelve questions in filling out the proper blanks. Most of these questions are understood by all, but they are not important to us Socialists. We, however, call your attention to this twelfth question: "What grounds—reasons, have you for claiming exemption from military service?" It is known that there will be a lot of Socialists who will not register nor answer any of the questions, despite the fact that the Government has decided to punish by one year's imprisonment those who fail to register. In Cleveland and Kings County, New York, Socialist locals have refused to register; the Pittsburgh Socialists likewise have refused to give their age. The Socialist locals in many towns are calling meetings for the purpose of discussing the registration. However, those who have not sufficient courage and who will register, in answering the twelfth question, will state that their principles as International Socialists, forbid them to go to war.

Registration is not equivalent to the sanctity of an oath.

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GOVERNMENT'S EXHIBIT No. 22.

"Capturing Slackers.

The Persecution of Opponents of Militarism.

"Slackers Being Captured.

United States Government agents, from June 11, to the 12, began vigorously to catch "Slackers," i. e., those who were required to reg-

ister on June 5th for the purpose of compulsory draft, but who heretofore had not registered.

There are more than a million "Slackers" in America.

Socialist Party's Secretary Arrested.

St. Louis, June 11.—Comrade A. Germer and 11 other individuals are dragged into court as conspirators against the compulsory conscription law. For several days prior to Registration Day they actively participated in the calling of a mass meeting. All have been released upon furnishing \$1,000 bail. Germer is the Socialist Party's General Secretary.

The Persecution of Opponents of Militarism in New York.

For failure to register and for agitating that others should not register L. Kramer, M. Becker, J. Walker and L. Sternbery, were arrested. The Jury which will try them consist- of business men.

39 Arrested.

382 New York, June 11.—39 persons were arrested at the Harlem Mass meeting which was organized by a league to fight against compulsory service in the Army. The persons arrested had no registration cards.

The United States Marshal, McCarthy, said that he would not permit any more such meetings.

55 "Conspirators" Arrested in Texas.

Dallas, Tex.—Government agents arrested 55 persons; they are mostly members of the "Farmers' and Workingmen's Protective Association." Some are charged with having organized to oppose with armed force compulsory military service; others with conspiring to destroy railroad bridges, tracks, etc.

D. Indriunas is Arrested.

Lockport, Ill.—Comrade St. Indriunas, a co-worker of the "Kova," was arrested for *disturbing* antimilitary literature.

GOVERNMENT'S EXHIBIT No. 24.

Advice to Those Called in the Army.

The Secretaries of the Branches Should Examine This Announcement Well and, Where Necessary, Give Advice to Our Comrades.

Examinations.

Having received announcement, one should go to the appointed place at the time specified, where the Doctor will examine him.

383 Aside from the examination, the Doctor will also ask these questions: Have you found that your health and habits in any way interfere with your success in civil life? If so, give details. "Does ill health or habits, in any way, interfere with the success of your life?" If so, explain in detail.

2. Do you consider that — are not sound and well? If not, state details. Do you think that you are now entirely healthy? If not, then what troubles you?

3. Have you ever been under treatment in a hospital or asylum? If so, for what ailment? (Were you ever treated in a hospital or asylum? If so, with what disease were you ailing?)

Those who have or have had any ailments should properly explain them to the Doctor in order that he might understand. After the explanation, it will be necessary to sign.

Those who the Doctor certify as healthy, will be regarded as accepted. All the accepted can claim exemption within seven days. The following can be grounds of exemption, (There are more, but they do not concern our members:)

1. That you are a subject of Germany, regardless, whether or not a citizen of this country.

2. That you are a foreigner (alien, pronounce e-l-a-e-n) that is that you have not first citizenship papers.

3. That you work in an establishment necessary for the military maintenance of the United States.

4. That you work on merchant ship.

384 5. That you are married and must support a wife, or child.

6. That you must support a widowed mother.

7. That you are the father and support of orphan sons under sixteen years of age.

8. That you must support old, or infirmed parents unable to support themselves.

9. That you are a brother and support of an orphan or orphans, brothers, under sixteen years of age.

10. That you are a member of a religious sect, or organization, whose principles are opposed to all wars.

The Government makes these kinds of announcements:

Announcement will also be sent to you, but posted in the office of the Local board will be a warning which will be an urgent request that you be present for examination. The law itself imposes on you yourself a duty to ascertain when you will be called. The announcement will be sent for your convenience, but should you not receive a letter, then you cannot justify failure to be present. Note the list of names posted in the office of the local exemption boards of those called, and note when they will call you.

Regardless of whether you shall claim exemption, or not, you

should be present at the examination at the time and day specified in the announcement.

If the local exemption board finds you unfit, it will give you a certificate and advise you as to your further duties.

If you require exemption, then you will have to make in the course of seven days from examination the claim. Having made your claim, you would be given ten days' additional to show the justice of your claim.

385 If they find you fit and you do not claim exemption, or shall not be present for examination at the appointed time, then you will be regarded as accepted for the army.

When you receive announcement that they will take you to the Army, then within seven days, if you desire, you can make application for exemption. The blanks on which claim is made are rather ordinary. If you wish to be exempt (a) go to the office of your local board and ask for blank form, 110 for temporary exemption (for exemption), or form 121 for permanent exemption (discharge). If the local board should not have further blanks, ask for the book in which are given the forms, and copy same from the book yourself.

(b) Fill out the blank and give it to a member of the Local Board.
(c) Do that within seven days from the time when the local board posted the warning and sent you the announcement.

Another person may make claim for you, but he should use different blanks, which he will get at the office of the local board. Having presented your claim, in the course of ten days you should furnish evidence, relying on which you claim exemption. With respect to evidence, observe the following:

First. Ascertain from your local board the number of the blank form on which you must set forth the evidence. (As separate blanks are required for different evidence.)

Second. Ask that they give you such blank forms, and if the local board has not them, then demand the book and copy from it.

386 Third. Having written down your grounds, make affidavit (witness by oath) and within ten days return to the local board.

Remember: Your grounds should be set forth on a specified form, as the local board will be unable to exempt you if you do not furnish them a certificate under oath (by affidavit) according to the explanation.

Members of the local boards will not enter into discussion with you and no other grounds will be valid, except the mentioned certificate under oath; unless the local board will require other grounds, which, however, will be a rare occurrence.

How soon will the fate of those claiming exemption be decided?

The local board will decide the claim of every temporary exemption or permanent exemption in the course of three days from the date upon which the witnessed certificates shall be presented.

If they should confirm your claim, they will issue to you a certificate of temporary or permanent exemption.

Remember

That the certificate can be withdrawn at any time.

If that certificate is temporary, it ceases to be valid as soon as the conditions in reliance on which it has been issued, shall change. After that, they can take you into the Army.

Remember, that the Government can require the District exemption board to have the local exemption board withdraw the certificate issued. And should it be withdrawn, that you are in the same class as those who made no claim of affidavit.

387 If the local board should not exempt you, then you should desire to appeal to the district exemption board, do as follows:

1. Go to the local board and get blank Form 153 or 154, and in case there are no blanks, then copy same.

Take a copy (from the book) blank Form 151 or 152 for appeal to the district board. Give your appeal to the local board on blank Form 153 or 154; and send the appeal to the district board on blank form 151 or 152. Do this within 10 days, when it shall be declared and announced that you will not be exempted from the army.

Furnish all new evidence (not those which you have already given to the local board), attested as before, to the district board within the course of five days from the time that you have made appeal.

The District Board will decide your matter within five days and let you know by letter.

The government has announced these explanations, but in order that they may be more explicit, it is necessary to add here to these.

All those, who shall claim Temporary Exemption (exemption), relying for exemption on conditions, numbers 1 and 2 should demand blank Form 110: All those, who shall claim Permanent Exemption (to discharge), should demand blank Form 121. Likewise there are blanks referring to other questions: The above mentioned numbers 1 and 2—the first mentioned blank—and the

388 latter afterwards.

Attention. Altho no privilege is given to conscientious objectors to war (conscientious objectors to war), however, the Socialists, their principles being opposed to war, demand exemption, but not having any of the aforementioned grounds, can demand exemption as conscientious objectors to war. For that purpose, affidavit Form- 143 and 143a should be used; the latter should be certified to by the secretary of that organization whose principles forbid its members to wage war and which has members desiring to be exempt. The claim for exemption should be made on blank Form 121 (for discharge.)

It would be well in filling out the blanks to get the *age* of one or another comrade who is familiar with the English language.

Take notice.

On the back of the blanks which shall call you for examination will be this announcement: That all those who shall endeavor themselves to escape military service or shall aid others in escaping military service will be punished by not more than ten years' imprisonment. Those, however, who shall conspire with others or shall interfere with the carrying out of the compulsory conscription law shall be fined up to \$10,000, or up to two years' imprisonment, or both.

Therefore, as you see, the Central Committee cannot give any advice. Comrades should decide everything at the place as they know all the regulations.

J. V. STILSON, L. S. S.,
Secretary-Translator."

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GOVERNMENT'S EXHIBIT No. 26.

Anti-War Manifest.

The branch of the 28th Ward of Cook County has introduced the following in the form of a resolution:

'Since the unusual convention of the (St. Louis) party decided to abolish the party's national committee, to divide the country into districts and to increase to fifteen the number of members of the Executive Committee, and

Since this kind of regulation and the fixing of the conduct of the affairs of the party, and

Since the spirit of the present Executive Committee does not wholly agree with that spirit which rules the war question in the party, and

Since it is very important that at present, as well as at the most important moment of the party, the Executive Committee should have demonstrated the party spirit and outlook, better saying, to be its real representatives, and therefore let it be introduced.

That as soon as the referendum accepts the mentioned new articles, the National Secretary of the party should immediately announce the nominations and elections of the new Executive Committee; he should take upon himself the service immediately after the elections and serve until June the 1st, 1919."

The socialist Party of the United States finds itself in a trying situation. The Government has declared war and urges us to enter the army and threatens us with compulsory service. Under the guise of patriotism and democracy our rights to benefit by the freedom of speech, the freedom of the press and the freedom of the assembly, are constantly being taken away from us. They are imposing on us militarism with all its terrors. Regardless that the majority of the people of this country do not wish war, fear is being so unlimitedly used that the people fear to raise their voice of protest. Therefore at this time it is most important that the Socialist Party should express its stand, which, in this time of war, is at the same time the stand of the majority of the people of America—by the following manifest.

The Socialist Party is known as the political party. Our purpose is to be the workingmen's political party, whose sole purpose is—that the working men should receive the full fruits of their labor. That is a party which does not recognize any territorial boundaries, no division of nations, race nor religion—a party of the world class of workers. We recognize just one division among the people and that division is among those who create everything and get only a small part of their earnings, and those who do not create anything

but with the aid of instrumentalities and most frequently the governments seize the largest part of that which the former prepare. It being understood that such a division of the people prevails in almost all countries regardless of whether the Kaiser rules them, King or President, and it is seen that when the command of force brings together all the parasites into one class without any distinction of

countries—our purpose is likewise to draw together the workingmen of all countries into one class. As the exercise of the government of all countries is in the hands of the parasites, which we wish to destroy or abolish, then it is our desirable, or undersirable but inevitable, task to be a revolutionary party of those countries. And we will not conceal this. We altogether openly and boldly declare our position and do not see the reason why we should now renounce! Our purpose—to take the power of the government from the hands of the parasitic class and to hand it over to the workingmen's class. We wish that the workingmen should govern and that the rulers should work. That being our position we were altogether opposed to the war. History shows that the capitalistic rulers have started nearly all wars for their own benefit while the workingmen were forced to fight in those wars and to pay for all things by their lives. Legalized bestiality among armed peoples was always the last instrument to hold, in the hands of the capitalists, that control, which does not belong to them. We should refrain from making such exceptions in this. Most clearly remembering the various industrial wars in which the workingmen of this country were always overcome by the aid of the control of the rulers, we do not confide in their deceitful appeals for the freeing of German workingmen and controlling by their knowledge the agitation and purposes of the American aristocracy, we refrain from believing their stories that they desire to dethrone the autocracy of the Prussians,

if indeed we should allow it, which, however, history does not permit, that it would be possible to give aid by armed force.

In our opinion their real purpose is—to strengthen more the plutocracy of America with the aid of bringing into America the militarism of Prussia and enthroning on the throne of the entire world the dollar of America. We therefore must earnestly protest against this United States war to impose war by force on the people against their will and without their consent. We refuse to enter it or to give ourselves up to forced conscription into it, and we appeal to all the workingmen to stand unitedly opposed to it. Let us follow the people of Finland who were sufficiently powerful to throw off the yoke of Russia's government. Let us organize! Let us agitate! Let us be prepared to show opposition! Let the parasites themselves fight for their interests."

Whoever agrees with this resolution he should immediately send his support to the Secretary of the party.

J. V. STILSON, L. S. S.,

Secy.-Translator.

Anti-War Resolutions.

Blanks of the party's referendum "B" had been sent out in 1917 to all the branches and members. That is resolutions concerning war and militarism—the majority and minority; the majority's resolution which the convention of the party adopted and the minority resolution, which Spargo and his followers prepared. I call the attention of all members of the L. S. S. that when going to a gathering where anti-militaristic resolutions will be voted upon to take along also No. 20 of the "Kova" for in it is an extensive translation of the resolution adopted by the majority; the minority's resolution follows here:

That war between the United States and Germany has become a fact; that we opposed it but we were unable to prevent it; that the workingmen's political and economic organization was not sufficiently strong to prevent that war. Since we did not prevent the war by our agitation we can now only recognize the actual fact and endeavor to make an impression upon the Government with the aid of the popular opinion, that that government should arrange the constructive programme (of the war)."

Our present hopes should be to decrease those sufferings which war imposes on the people, defend our rights and our freedom from reactionary elements and to endeavor to bring about a quick peace supported upon democratic foundations, beneficial to the international class of workingmen.

"Further we should take advantage of the practice which allows under conditions of war to push forward our democratic collectivism programme * * * All the other warring countries found during the war that capitalism grew from efficiency, productiveness and moderation. In order that the greatest efficiency might arise either for military or civil effect a necessary need was found to be to throw aside the means of capitalistic manufacture. The warring nations had to throw the old, capitalistic organization and the means of manufacture into the first economic endeavors for profit, and to accept the principle of the Socialist's programme for employing manufactured products. By that the war manifested itself in the higher efficiency of the collective organization and the regulation of manufacture.

"Being governed by this experience we are reorganizing our economic system so that we may receive from the sources of wealth of regulated countries the greatest possible satisfaction and stability.

For the purpose of advancing our objects we propound the following:

Programme of the War.

No. 1. We are of the opinion that the Socialist Party should establish a connection with the Socialists of the opposing nations for the purpose of establishing a peace on democratic foundations in the quickest possible time.

No. 2. We demand that the freedom of the press, of speech, and of assembly, should not be disturbed.

No. 3. We demand agreements between the workingmen and the employers in places which shall be taken over by the Government, or in whatever service of the government, that the workingmen themselves should through their organizations regulate the relations, and that those who are not yet organized should not be disturbed in their organizations.

No. 4. We demand that conscription if it should be instituted should begin from wealth. All annual incomes—receipts, above \$5,000, should be taken into the Government's hands and employed for defraying the current expenses of war. If it is just to take men by force, then it should be just also to take wealth. Money is not as sacred as a man's life.

395 No. 5. We demand that conscription should not be introduced as long as the people of America will not be given the right to vote along the line decided. The government of Britain gave the people of Australia the right to vote whether they should be taken into the army by force. We demand the same kind of laws for the American people.

No. 6. We demand that the government seize and conduct all of the largest manufacturing, transportation,—and food markets and establishments of necessities of life and to conduct them for the benefit of the people.

No. 7. We demand that the government seize all of the suitable unworked land and work it with the purpose of furnishing this country food necessities.

No. 8. We demand that the Government should take into its hands all the land and the means of water transportation; all water sources and all of the irrigation plants, mines, forests and sources of light and likewise all of the manufacturing monopolies and that that be done immediately before the country is forced to endure all of the sufferings of the corrupt capitalists and in the oppression of the directors of the war."

Nearly all of the noble patriots have signed this resolution and that resolution as the readers see is not distinguishable from the various bourgeois stories. "Our present object should be—to decrease these sufferings which war imposes on the people!" And how will they alleviate these sufferings? If the government will

take into its hands the manufacturing plants. But every
396 sound mind and the daily effects confirm that it should be

thankful that if the German government was able to organize the manufacture and the preparation of food and distribution, she will be able to extend the war. It is a fact that during war times the working men of the government are converted into real slaves and the stronger the government and the firmer the better is it able to defend the interests of the ruling classes. The ruling class to-day are not the working men. The masters of the very resolution admit that. Therefore to strengthen the government's confidence among the people would mean the same thing as to strengthen Morgan's interests. Gompers sings this kind of a song, the same kind

of a song Spargo and his company also sing. Our comrades should vote for the majority resolution. Adopting the resolution of the majority we shall demonstrate to the working men of America, belonging to the Socialist party, a clear position with respect to the question of war and that the stain which was the lot of Germany, France and England, and on our agitation here let us not follow that which fell on the agitation of the working men of Germany, France and England." By "constructive programmes of war" we leave for the concern of those who fill their pockets from the blood and suffering of the people of their country (and all other countries). War perhaps can give "opportunities" but not for the advancing of democratic "collectivism," and the annihilation of all existing order, but such "opportunities" were not raised by the authors of the minority resolution.

J. V. STILSON, L. S. S.,
Secy.-Translator."

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GOVERNMENT'S EXHIBIT No. 28.

Statement of the Ownership, Management, Circulation, etc., Required by the Act of Congress of August 24, 1912,

Of 'Kova,' Published Weekly at Philadelphia, Pa., for October 1, 1917.

STATE OF PENNSYLVANIA.

County of Philadelphia, ss:

Before me, a Notary Public in and for the State and county aforesaid, personally appeared Joseph Sukys, who, having been duly sworn according to law, deposes and says that he is the Manager of the Kova, and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Name of—	Post office address.
Publisher, Lithuanian Federation Socialist Party, Inc.	
Editor, K. Vidikas	229 N. 6th St.
Managing editor, J. V. Stalioraitis	229 N. 6th St.
Business Managers J. Shukys	229 N. 6th St.

2. That the owners are (Give names and addresses of individual owners, or, if a corporation, give its name and the names and addresses of stockholders owning or holding 1 per cent or more of the total amount of stock.)

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No. stockholders: The paper is published not for pecuniary profit. The principal officers consist of President, (K. Vidikas, 229 N. 6th St.) Manager, (D. Shukys, 229 N. 6th St.) Secretary, (D. V. Stilson, 229 N. 6th St., Philadelphia, Pa.)

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.)

None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any
399 interest direct or indirect in the said stock, bonds or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six months preceding the date shown above is..... (This information is required from daily publications only.)

J. SHUKYS.

(Signature of editor, publisher, business manager, or owner.)

Sworn to and subscribed before me this 24th day of September, 1917.

[SEAL.]

GEORGE H. RAPSON,

Notary Public.

My commission expires March 30, 1919.

Post Office Department,
Third Assistant Postmaster General,
Division of Classification,
Washington.

Extracts from the Postal Laws and Regulations.

Sec. 443. It shall be the duty of the editor, publisher, business manager, or owner of every newspaper, magazine, periodical, or other publication to file with the Postmaster General and the postmaster

at the office at which said publication is entered, not later than the first day of April and the first day of October of each year, on blanks furnished by the Post Office Department, a sworn statement setting forth the names and post-office addresses of the editor and managing editor, publisher, business managers and owners, and, 400 in addition, the stockholders, if the publication be owned by a corporation; and also the names of known bondholders, mortgagees, or other security holders; and also, in the case of daily newspapers, there shall be included in such statement the average of the number of copies of each issue of such publication sold or distributed to paid subscribers during the preceding six months: Provided, That the provisions of this paragraph shall not apply to religious, fraternal, temperance, and scientific, or other similar publications: Provided further, That it shall not be necessary to include in such statement the names of persons owning less than one per centum of the total amount of stock, bonds, mortgages, or other securities. A copy of such sworn statement shall be published in the second issue of such newspaper, magazine, or other publication printed next after the filing of such statement. Any such publication shall be denied the privileges of the mail if it shall fail to comply with the provisions of this paragraph within ten days after notice by registered letter of such failure. (Act of August 24, 1912.)

2. All editorial or other reading matter published in any such newspaper magazine, or periodical for the publication of which money or other valuable consideration is paid, accepted, or promised shall be plainly marked "advertisement." Any editor or published printing editorial or other reading matter for which compensation is paid, accepted, or promised without so marking the same, shall upon conviction in any court having jurisdiction, be fined not less than 401 fifty dollars (\$50) nor more than five hundred dollars (\$500). (Act of August 24, 1912.)

3. The statement required by this section shall be made in duplicate, on Form 3526, and both copies delivered to the postmaster at the office of entry of the publication. The postmaster shall forward one copy to the Third Assistant Postmaster General (Division of Classification), and retain the other in the files of the post office. To enable publishers to file such statement promptly, postmasters shall furnish them copies of Form 3526 at least ten days prior to the first day of April and of October of each year.

4. Postmasters shall obtain for the files of their offices a copy of the issue of each publication at their respective offices, in which the required sworn statement is published.

5. Postmasters shall give prompt and careful attention to the making and filing by publishers of the statements required by this section, and promptly report to the Third Assistant Postmaster General the failure of any publisher to file such statement, or to publish it in the second issue of the publication printed next after it has been filed, but in no case shall a publication be denied the privileges of the mail except upon departmental instructions.

6. Where exemption is claimed from compliance with the pro-

visions of this section, the postmaster shall request from the publisher a statement showing the ground on which such exemption is claimed and forward it to the Third Assistant Postmaster General, 402 Division of Classification, together with a copy of the publication.

Instructions to Postmasters.

Each statement should be examined carefully when submitted to see that it has been properly executed and contains all the information required by the law, and, if complete, one copy should be promptly forwarded to the Third Assistant Postmaster General, Division of Classification, and the other retained in the files of the post office. Incomplete statements should be returned to the publishers with the request that they be completed so as to give all of the required information under oath. The statement of each publication should show in full the names and addresses of the owners and all persons owning or holding 1 per cent or more of the total amount of bonds, mortgages, or other securities issued by the publication. If a publication is owned by individuals, their names and addresses should be given. If the ownership is vested in a corporation, the name of the corporation should be shown and, in addition, the name and address of each stockholder owning or holding 1 per cent or more of the total amount of its stock. In the event that there are no bondholders, mortgages, or other security holders, that fact should be stated. In cases of stock, bonds, or other securities held in trust for others, the names of the beneficiaries should be given.

The information required of daily newspapers concerning 403 the average number of copies of each issue sold or distributed, through the mails or otherwise, to paid subscribers during the preceding six months should be shown in the space provided therefor on Form 3526 without any change or alteration in the wording thereof. In the case of newspapers entered as daily, including Sunday, the statement should show the average number of copies of all of the daily issues, including the one on Sunday, sold or distributed to paid subscribers.

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Third Day.

UNITED STATES

VS.

STILSON & SUKYS.

Philadelphia, Pa.,

Thursday, October 3, 1918—3.10 p. m.

Present: Parties as before noted.

Charge of the Court.

Hon. Oliver B. Dickinson, J.

GENTLEMEN OF THE JURY: The charge against these defendants is one which is, in general terms, known as a conspiracy charge. It is a charge of conspiracy. There is a thought involved in that which it is necessary for you to get into your minds in order that you will be able intelligently to pass upon the case which is before you, because it is very evident, when you are attempting to decide anything, that the best preparation for a sound and just decision is to get clearly into your minds, "Well, what is the thing which we are asked to decide?" Let us see if we can get that into your minds.

This sort of a charge, as I was about to say, suggests this thought or this distinction. We can all understand that there may be a law prohibiting something, making something an offense or a crime.

That is one thought. Anyone who is guilty of that prohibited act is guilty of the offense, of the crime, and if it is proven, as the law requires, may be convicted of it. You may have another law which makes it an offense, a crime, to conspire together to have this concerted purpose among two or more people to commit this other offense. You see, the two things, while, in one sense the same, are distinct in this, that each is a separate offense. Doing the prohibited thing is an offense against the law. Two or more people conspiring together to do or have done the prohibited thing is an offense. It is that latter offense with which these defendants are charged. They are charged with a conspiracy to do the unlawful thing of committing or having committed an offense against the law.

What is the offense against the law with which they are charged, as having conspired to have committed? They are charged in that respect, generally speaking, again, with two things, and there is a subdivision among them. Generally speaking, the two things are these: there is a law known as the Espionage Law, which prohibits the doing or committing of certain acts. They are charged with having conspired together to have that offense committed. We have another law which is involved, a part of the Selective Service Act,

what is sometimes called the Draft Law, which also prohibits certain things being done, and requires certain things to be done, which makes the commission of these prohibited acts an offense.

It makes the commission of these commanded acts an offense.

406 They are charged also with having combined together to offend against that law, or rather to conspire to commit that offense.

Therefore, you have in this indictment what are called two counts. It is only another way of saying this; an indictment means merely a written accusation, a statement in writing of the thing with which a defendant stands charged. If the offense is properly stated in more than one way, or if the defendants are charged to have been guilty of more than one offense, then each of those is set forth distinctly and separately in what are called different counts. So that you have in this indictment two counts. The first relates to the Espionage Act. In order that you may have in your minds definitely and clearly just what that is, I will read the pertinent section to you, which is the third, and the verbiage of this Act is worthy of your attention. It is very clear, and I think will convey definitely, accurately, to your minds just what it is which is prohibited.

"Whoever, when the United States is at war, shall wilfully make or convey false reports or statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies"——

That is one proposition, and one prohibited act,——

"and whoever, when the United States is at war, shall wilfully
cause or attempt to cause insubordination, disloyalty, mutiny,
407 or refusal of duty, in the military or naval forces of the
United States"——

You see, there is another thought, and it continues:

"or shall wilfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States"——

Then it pronounces the commission of those things to be a crime, and prescribes what the punishment shall be.

You need pay no attention to the first clause, because these defendants, nor either of them, are charged with the first act. It is not asserted against them that they have made false reports or statements with the intent to promote the success of the enemies of the United States. They are charged, however, with both of the succeeding offenses set forth in the Act, to wit, what I will briefly characterize as causing or attempting to cause insubordination, and with the other offense, of obstructing recruiting.

We come now to the Selective Service Act. This sets forth the requirements as to registration. It is not necessary for me to delay you or take up your time in quoting it, but after setting forth what its requirements are, the Act provides:

"and any person who shall wilfully fail or refuse to present himself for registration or to submit thereto as herein provided"——

408 shall be guilty of a misdemeanor, and it prescribes the punishment.

The section which I have just quoted is the fifth.

The next section, the sixth, provides:

"That any person who shall make, or be a party to the making, of any false statement or certificate as to the fitness or liability of himself or any other person for service under the provisions of the Act or regulations made by the President thereunder, or otherwise evades or aids another to evade the requirements of this act, or such regulations, or should in any manner so fail or neglect fully to perform any duties required of him in the execution of this Act, shall, if not subject to military law, be guilty,"

and suffer punishment as the Act prescribes.

Therefore, you get just what the law is against which these defendants are charged with having offended, and you get what the charge is in the sense wherein they are said to have offended against the law.

Under the fourth section of the Act, which I have just read, and by general statute of the United States, as I have already indicated, it is made a separate and distinct offense for two or more people to conspire together for the purpose of and with the object in view of the commission of any act which is an offense against the law of the

409 United States, with this limitation and qualification, and this is important, they must not only have conspired together, having had this concert of purpose and intended action, and that must have been not merely for the purpose of having an offense committed against the law, which would be a bad thing in itself, and it might be made an offense in itself, but it has not been,—the law does not stop there, but it adds this thought, that, in addition to having conspired together for this unlawful purpose, they, or some one of them, some one of the conspirators, must have done some act to effect the object of the conspiracy. That is what is called the overt act. In other words, they must have conspired together, and some one of them must have done something, committed some act in furtherance of the conspiracy. You get that thought.

Therefore, this indictment sets forth that these defendants in this first count conspired together for this unlawful purpose, to wit, to cause or attempt to cause insubordination to which I have referred, to obstruct the enlistment, to which I have made reference, and, in furtherance of that conspiracy, someone of them did something to effect the object of the conspiracy. In other words, to make that conspiracy effective, they did the things set forth in the indictment, and as to which you have heard testimony in the case, consisting, among other things, of the printing and publication of this paper containing the articles which you have had read in your hear-

410 ing, and upon which you have heard the comments which have been made by counsel both for the United States and for the defendants, the printing and circulation of these pamphlets or circulars, or whatever they may be called, and the other overt acts which have been charged against them, and to which reference has been made in the testimony. That is the charge.

As it has been very well said to you, you are not to assume, because they are charged with the offense, that they are guilty of it. That would not only be absurd on the part of any tribunal that claimed to be intelligent, but it would offend against our sense of justice, and would be, I was about to say, the greatest wrong that could be committed by anyone.

I know of no greater service which American citizens can render to their country than when they are sitting as jurors in the trial of a case, to make it clear to the whole world that America is a country governed by law, and not by the caprice or whim or arbitrary will of anyone. That is the first proposition. We are subject to the laws and the laws alone, and more than that, in America, no person can—the conscientious sense of duty upon the part of a jurymen is such that no person can—be convicted of an offense against the law unless the proof of his guilt is brought home to him, and not only brought home, but brought home with that degree of certainty which the law requires.

We are animated by those two thoughts, first, our subjection to the law and the law alone, and, secondly, to our sense of justice, that no man shall be convicted unless the proofs as offered
411 in the evidence warrant it, and I am sure that each one of you is actuated by those two sentiments.

An indictment proves nothing except, as is often said, the mere fact that a man is charged with a crime. It is proof of that, because there is the charge, but that is all. As counsel has very well said to you, its practical meaning is nothing more than this, that the authorities constituted for the purpose, have passed upon the question as to whether there is enough in the charge to make it worth while to submit it to the consideration of a petit jury. That is all it means. It is submitted to you, and it is submitted to you and to you alone, to determine whether or not it is well founded in fact. How do you know whether it is well-founded in fact? You know it, and you know it in no other way, through and by the sworn testimony, and the evidence in the case. If that carries to you a conviction of the truth of the charge, within the limitations I will outline to you in a moment, that is proof in the sense in which the law uses that term.

Therefore, you get down to the evidence in the case. I do not intend to delay you by going over it, because it is fresh in your memories, and I could not adequately discuss it without going over all of it, and that would take up an unnecessary amount of your time. It has been discussed by counsel with a fairness on both sides
412 and with an ability that I am sure has been refreshing to all of you. It is with the highest gratification that anybody connected with the trial of cases experiences the atmosphere of not only fairness, but the atmosphere of candor and consideration for each

other, that has been manifested throughout this case by counsel both on the one side and on the other, and I am sure you have appreciated that to the same extent as has the court.

Now, get down to the charge. You will recall, and I will bring it back to your minds, what it is that you must find. Of course, you must find that these parties conspired together. That is the first thing. In passing upon that question, of course you are not asked to find whether or not there was a verbal compact between them and among them, that they would do this thing, which they put down in writing and signed and attached their seals to, or which they expressed in oral words. The law does not mean any such thing as that. But it means the substantial thing, was there an understanding among them, was there a participation upon the part of all of them, or some of them, or at least more than two of them, in the thought, "We will act together in concert. We will have this common purpose of accomplishing this common object," and you gather that by using your common sense and your judgment. You gather that, of course, from all the evidence in the case, and the conviction, after a consideration of all that evidence, will grow up in your
413 minds as to whether there was or whether there was not this unity and agreement of purpose, this common thought, this concerted action among them, and if there was, that fulfills the idea of conspiracy in the eyes of the law. I am sure you get that thought.

The next thing is, did they stop there? Or did one or more of them do some act to effect the carrying out, the objects, and the purposes of the conspiracy? In other words, the overt act. Was there an overt act committed? If there was, then the charge of conspiracy, to that extent, is made out. But it is not an unlawful conspiracy, so far as the facts of this case are concerned, unless the thing that was to be done, unless this common object, was an unlawful thing, and unless this common purpose was an unlawful purpose, and the unlawful purpose as charged, and you must find that they wilfully caused or attempted to cause insubordination, disloyalty, and the other things which are enumerated under that general head in the law, which I have already quoted in your hearing.

You will notice that word "wilfully." The word "wilfully" often conveys to our minds the thought or the idea of "wile." It often conveys to our minds the thought or idea of "will," the will to do it, and in that sense the intent, the resolve and purpose, that the thing shall be done, and it is in that sense that the word "wilfully" is used. It involves the thought of conscious knowledge of what the man is doing, not a thing that is done absent-mindedly, without any
414 conscious purpose in it, not a thing that is done, as we sometimes do things, in a spirit which is better described by the phrase "negligently done," something that, on reflection, we know we ought not to have done, but which we did merely because of thoughtlessness or inconsiderateness or because we did not take into consideration what we are really doing. This word "wilfully" involves more than that. It involves that thought of knowledge of what was being done, and it involves also the intent to do it, that it be done.

You will notice that the insubordination need not be actually caused, brought about. In other words, the attempt need not have been a successful one. The law does not require that. If he shall either cause it or attempt to cause it, the offense is made out.

You come to the other charge, and you will find it is substantially the same thought. "Or shall wilfully obstruct," and so forth. So you have again that word "wilfully." It must be done consciously, with knowledge upon the part of the doer of the act, that he is doing it, and with the intent that the thing which he is doing, and which he knows he is doing be done, because that necessarily is involved, the intent to do it. You will observe, here, that the words are not "to stop recruiting," but the words are "obstruct recruiting," and that mean to do anything that hinders, hampers, makes more difficult, puts an
415 obstacle in the way of, because the word "obstruct" has, probably, more definitely that thought than anything else. "To obstruct" means very nearly that, to put some obstacle in the way, to throw something athwart the purpose of this law.

You will observe that while the first section of this Act, with which we have nothing to do, because it is not charged in this indictment, but which I have read to you merely for the purposes of illustration of what is charged—you will notice that the first clause of this Act writes into it as an ingredient the thought that it must have been done for the purpose of promoting the success of the enemies of the United States, or what is the same thing, weakening our own military power, and there is behind all this law that general thought, and that general purpose, but you will bear this in mind, that while an act done may be within what is evidently the general purpose and intent of a law, that before you can find the person guilty of it, the law must go further and make the specific thing with which he is charged an offense against the law. For instance, within the general purpose of this law is the publication, the dissemination of false rumors, that may promote the success of the enemies of the United States. That is within its general purpose. Causing insubordination is within its general purpose. Obstructing enlistment is within its general purpose. But if, when Congress came to enact the law, they said nothing
416 about false reports or statements, and if they had said nothing about causing insubordination, and had only condemned and made an offense the obstructing of enlistments or if that were the only offense charged, then that is the only thing of which you could find a defendant guilty. So, therefore, you look to this law, and you find it does make it an offense to attempt to cause insubordination. You will find that it does make it an offense to wilfully obstruct enlistment. You find also these offenses charged. The next question for you to determine is the presence of essential elements. One of them is, for instance, that the United States is at war. Secondly, that what was done was an attempt to cause insubordination, or what was done did amount to obstructing enlistment, and the question may arise in your mind how you are to determine that. Whenever you are asked as a jury to pass upon anything which is a matter within common knowledge, common information, things which people ordinarily know, which are generally and practically

universally known, when you are passing upon such questions, you have the right to call upon your general knowledge and information. You must determine, for instance, the question whether or not we are at war, because unless we are, this indictment goes for nothing. You may determine that from your general information, this something of which, in the phrase of the law, the law takes judicial notice. So also when you come to determine the question of whether or not there was an attempt to cause insubordination, you take, of course, all the evidence into the case, and you have a right to direct your minds, as

417 naturally you would, to the character of these publications themselves, these pamphlets and these articles, and determine from them, assisted by all the other evidence in the case, whether or not they do reach the dignity of the charge of attempting to cause insubordination, or amount to an obstruction of enlistment.

That is all I care to say as to the particulars of the evidence and the charge against these defendants, because, as I have said, it would take an undue amount of your time for me adequately to discuss it, and I would not care to give you any partial discussion of the evidence. You have heard it. You can weigh it. You can appraise it at its true value.

In considering a criminal case there are always certain general rules in the light of which and with the aid of which the jury is required, as part of the obligation of their oaths, to consider the evidence. They are well known, I am sure, to all of you. But you will understand that so solicitous is the law that no man be unjustly or improperly convicted, that it is made the duty of the trial judge to call these matters to the attention of the jury, no matter how well they may be known to them, out of solicitude that justice be done, and for fear that they may not be well known to the jury, or may not be at the moment present in their minds.

One is, as it is commonly called, the doctrine of presumption of innocence, or as it is very often put in the phrase, that every man is deemed to be innocent until he is proven to be guilty. I will
418 not dwell upon it, except to say this, that perhaps we could get the best idea of what the real doctrine is if we put it negatively instead of in the positive form, and it is that no man is ever presumed to be guilty. He cannot be found guilty unless he is proven to be guilty. You cannot find a man,—no jury would be justified, as your common sense and sense of justice would tell you,—in convicting a man out of any mere feeling of prejudice, which is only another word for prejudgment. You cannot convict him upon the general proposition—"well, he is charged with this offense, and there must be some truth in it, or he never would have been charged with it," or for any other like thought in your minds. You bring to your minds this thought, and face it, that it is made the duty of the petit jury as the trial jury to say, "Now, this man is charged with a certain offense. We understand what the offense is, and we understand wherein he is charged with having committed it. Now, you produce your proofs," and the burden is upon the United States to produce the proofs. Among them, of course, is the act itself, the things that are charged. The first fact is whether these defendants were acting

together for this common purpose, and the proof of one or more of the overt acts which are charged against them.

Another thing is the degree of certainty which must exist in the minds of the jurors in a criminal case. If you were sitting in a civil case, and a question of fact arose on which there was
419 evidence upon one side, and there was evidence upon the other, and the scales, in your judgment, were pretty nearly upon a level, upon a balance, you would determine it by what is called the preponderance of evidence. You would make use of your best judgment, and determine to which side the scales inclined, and while that might not lead you to a conviction which had any degree of certainty about it, you would be fulfilling your duty if you followed that inclination of your minds as to the way the truth looked to be to you, but again, the law, in its solicitude to guard against danger, or unjustly convicting defendants of crime, has required more than that upon the part of juries, and they must not only be prepared to say that their judgments lead them to the conclusion of guilt, but that it leads them to the conclusion of guilt beyond a reasonable doubt. Notice the limitation. Not beyond all doubt, or the possibility of doubt, or the danger even of making mistakes. The law does not require any such degree of certainty as that, because that is practically impossible in human affairs, but it means precisely what it says, "reasonable doubt." When you have reached your conclusion, after each one of you has asked yourself whether or not you have any reasonable doubt of the correctness of the conclusion to which your minds are inclined, if there is any reasonable doubt, it is based upon something, and you apply to that your reason, which is only another
word for your common sense, and see whether or not there is
420 any basis for the doubt. To put the phrase in another way, whether you have any real reason to doubt, and if after that examination the doubt remains in your minds, and there is that thought of uncertainty as to your conclusion, that is the kind of a doubt, to the benefit of which a defendant is entitled, and the command of the law is for you to stop, go no further, but to render a verdict of not guilty, but if the doubt does not exist as a reasonable doubt, then you follow your convictions.

The other thing is evidence of good character. The law makes that substantive, affirmative evidence. That means it is evidence in the case, it is substantial evidence, and it is important evidence always in every criminal case, for many reasons, which I will not stop to dwell upon. It is made your duty to consider it, but you will want to consider it intelligently and understand precisely what the law means. While evidence of good reputation, which it really is, or good character, as it is commonly called, is proper to be introduced in any case as part of the evidence in favor of a defendant, it is not an excuse for crime or a defense to the charge of crime or an answer to a charge of the commission of a crime. Your common sense would tell you that. That is not its function or is not the part which it plays. If the evidence points, beyond a reasonable doubt, to the guilt of a defendant, no matter who he is, no matter how high and strong the evidence of his previous conduct may have been, the good

reputation which he has sustained, or, as we call it, the high character which he has sustained, no matter how strong that evidence is, if he committed the offense, he is guilty, and you would not excuse him because he had before been a man of good character. It is not a defense to the charge in that sense, but when you are considering the question, "Is he guilty, has he committed this act?" then you consider the evidence of good character as bearing upon the question of, "Is he guilty?" Evidence of good reputation and good character is always entitled, and should always receive, most careful consideration upon the part of a jury, but again you should consider it as intelligent men. There is truth in the observations which were made to you. Evidence of good character is like any other evidence which comes before you—sometimes it is very strong and may have an overwhelming weight in your minds, and other times it may have a less direct bearing upon your judgment of the case. You will consider it, as I have said, you must consider it, but you are to consider it intelligently, and you are to give it its due weight.

Just one word in conclusion, gentlemen, and that is this. The law calls upon you, and you would make that call upon yourselves, if the law did not make it, to consider this case without prejudice. These defendants seem to have been born on foreign soil, or to be at least of foreign extraction. That is a fact in the case, but it is very evident that it is not a fact which has the slightest bearing upon the question of the guilt of these defendants, and I am sure that that will not be made the basis of any prejudice either for or against them. I say "for them", because there is that in the history of the people of that part of the World from which they come which may very well appeal, and appeal strongly, to the sympathetic feelings of any one who is familiar with the history of some of the other countries of the world. This relatively little province from which the defendants come has played a very conspicuous part in the history of the World. If you go back to the times of two men, who have made very important figures in the world, Peter the Great of Russia, and Charles the XII of Sweden, and refresh your minds on the history of these times, you will begin to appreciate the important part which little Lithuania has played, as I have said, in the affairs of the world. Unfortunately, her people fell under the domination of a power of overwhelming strength. Their aspirations for national life, for all these years, to a certain extent have been crushed. But it is very much to the credit of her people that this aspiration although it has been suppressed and crushed, it has not been exterminated, and there is still the aspiration among them to have that national life restored, and we can very well have a good deal of sympathy for men who have been brought up under conditions which, happily for us, have no place in free America. This might very well cause us to have a strong feeling of sympathy and induce us to make very great allowances for people who in themselves, perhaps, in family and national tradition, at least, have gone through the sad experiences through which they have gone, and you might very well have sympathy for them. Let us face the

423 simple question of their guilt or innocence of this charge, and let your verdict reflect that, and reflect nothing else.

I will answer the points that have been submitted to me on behalf of the defendants, and leave the case with you, with just one word as to your formal verdict.

Point number one is negatived, and not read.

Point number two is:

"If the jury can only determine guilt on the part of the accused from evidence based on books, papers, printing or writing taken from the accused by Government officials or agents, then the verdict should be 'not guilty'."

Assuming this means that you should be instructed to disregard the value as evidence of these books and papers because of the means through and from which they happen to be before you, I negative that point. These are all in the case, and are to be considered by you.

If the point means, however, that their guilt would appear if you considered only that evidence, and nothing else, but would not appear if you considered some other evidence in the case, if it means that, then I affirm it, or, in other words, my instructions are to you that you are to consider and give due weight to all the evidence, books and papers, included.

The third point is negatived, and not read.

424 "4. If the accused did not wilfully cause or attempt to cause insubordination, disloyalty, mutiny or refusal of duty in the military forces, or did not wilfully obstruct the recruiting or enlistment service of the United States to the injury of the service or of the United States, your verdict should be 'not guilty'".

I have so instructed you. That is in accord with my general charge, and you will understand what I said to you about the necessity for the existence of the thought of wilfulness or of the act having been wilfully committed.

"5. Under the first Amendment to the Constitution freedom of speech and of the press cannot be abridged, and people can only be held responsible for any injury resulting from their utterances."

I cannot affirm that just in the words in which it is written. "Freedom of the press" and "freedom of speech" are rights not only which exist, but they are rights which have the sanction of the supreme law the sanction of the Constitution of the United States, and for that matter of the Constitution or Bill of rights of every State in the Union, and indeed wherever the idea and thoughts of law as understood by English speaking people exist, every man has the right of free speech. Certainly each and every one of us would have a feeling of sadness if there was a possibility of it being taken away from us. We have the right of free speech, but we have no right to violate the law, or, as it is commonly expressed, while we

425 have the right and privilege of free speech, we are responsible for the abuse of it, and if in the assertion, mistaken or otherwise, of what we regard as the right of free speech, we violate the law, we are answerable for the violation, and our right of free speech will not save us. A number of illustrations have been given

to you. A man has the right to write what he believes, but if what he writes is a libel upon some one, if it blackens the reputation of one who is living or blackens the reputation of the dead, the man who puts forth that libel has the right of free speech, including the right to write, but if he has been guilty of libel, he may be punished for it, and so with any other crime of which he may be guilty.

"6. Unless the jury finds from the evidence that the defendants wrote the newspaper articles complained of or were responsible as editors of Kova for their publication, they cannot be found guilty as to this charge."

I affirm that with this qualification. You will bear in mind that the charge is not that they did these things; the charge is a conspiracy to do them. Every man who had any part or share, who participated in the doing of an act, is responsible for the act, and the act really is the publication and not the writing of the article. For instance, if a man publishes an article, or has a part in its publication, he may have had no part or share in the writing of the article, he may even have had no knowledge that it had been written until after it was done, and knew absolutely nothing about it, but
426 if the act which is complained of is the publication, and he had a part or share in it, then he is answerable.

"7. If the jury finds that others than the defendant Stilson operated the typewriter exhibited in evidence, the fact that he also used it cannot be considered of itself proof that he was the author of the mimeographed circular, entitled 'Let Us Not Go To The Army,' especially in view of his denial of authorship to Agent McHenry and on the witness stand."

Gentlemen of the jury, I affirm that. Of course, that goes without saying. Here is a typewriter, or a pen, for that matter. The proof is that a man uses that pen. It also appears that somebody else uses it as well as he. The mere fact that a particular article has evidently been written by that particular pen would not in itself be sufficient to justify anybody in finding that either one of those persons had written that particular article. The possession of this typewriter, as the possession of the pen; the ordinary use of this typewriter, as the ordinary use of the pen, is a fact in the case to be considered along with all the other evidence in the case, and the effect of all the evidence must be to lead to your finding beyond a reasonable doubt that he did have part in the act.

"8. If the jury finds from the evidence that the editors of
427 Kova were Vidikas and Stalioraitis, the defendants Stilson and Sukys cannot be held responsible for the acts of these editors in publishing the various news articles and editorials in Kova."

I will have to qualify that point, by again reminding you that the charge here is one of conspiracy, that they conspired together with these persons named and with another person who is also named in the indictment, and if the conspiracy existed, and any one of these conspirators, any one who was among those who were acting together, committed any one of these overt acts, then the charge of conspiracy is made out.

"9. Unless the jury finds that a conspiracy has been proved by the acts of the defendants, your verdict should be 'not guilty.'"

I affirm that point. There must be the finding on your part, and I will go a little further, you must not only be convinced that this conspiracy existed, but you must be convinced of it with that degree of strength of conviction which is characterized by the expression of "guilty beyond a reasonable doubt."

Just one word as to the form of your verdict.

This indictment charges this offense to a number of people. There are only two of them before you, because the others have not been apprehended. They are not here. We cannot hear their side of the story. Therefore, the law does not permit you to pass upon the question of their guilt. You are confined to the two men

428 who are now on trial.

You may convict both, under the evidence in this case, or either. You may find them guilty on both counts of this indictment, or guilty under one, and not guilty under the other. Of course, you may find them not guilty. You may find both not guilty, or either not guilty, or not guilty upon both or either of these counts. All that is for you. Of course, I am not indicating to you what your verdict should be, or may properly be. I am only indicating the verdict it is within your power to render, in the case of either of these defendants—I say this to you, because, there being two defendants, and as it would be an absurdity to convict a man of conspiring with himself, the inference naturally might be drawn that you either had to convict both or none, but bear in mind that the charge is that all of these people conspired together. So that if any one of them conspired with any of the persons named, whether one of these particular defendants or not, the conspiracy existed and your finding may be a verdict as to both of them or as to either. Let me say again, that is merely to tell you what it is within your power to do. You have full control over this evidence. The law puts the responsibility upon you as a jury, and on no one else. I would be very glad, if the law permitted me to do so, to relieve you to any extent I could of the responsibility, because naturally many jurors, some of you perhaps, serving for the first time as jurors, may

429 feel your inexperience, and may look to the trial judge for guidance as more experienced in the trial of cases than yourselves. Understand, the responsibility is put upon you, not through any unwillingness upon the part of the trial judge to share it with you, but simply for the reason that the people of the United States have declared time and time again that a jury and nothing but a jury, shall pass upon the facts involving the guilt or innocence of defendants on trial.

Gentlemen, you may take the case and dispose of it.

Mr. Roberts: I would like to suggest, in one place where your Honor was referring to the Espionage Law, you mentioned that there was no charge concerning the first section of the Act, then you said "they are charged with both of the other offenses." What your Honor meant to say was that they were charged with conspiracy to

commit both the other offenses. I am sure the jury understood that, but your Honor left the word "conspiracy" out.

The Court: I may have done that. It is perfectly natural to fall into that error. But of course, gentlemen, you will understand that running all through the case is that first dominant thought and note, that the charge here is, not the doing of the thing, really, but a conspiracy to do it. Of course, in a sense, it comes back nearly to the same thing, but there is that distinction.

Mr. Nelson: Will your Honor grant me an exception to those points for charge which you refused to affirm?

430 The Court: Yes. I will give you an exception to the points disaffirmed, and I will give you an exception to the points qualified, and an exception to all the comments made upon the points, other than a clean affirmance.

(Exception noted for the defendants, as above indicated, jointly and individually, by direction of the court.)

Defendants' points which were refused by the Court without being read, are as follows:

"1. Under all the evidence, your verdict should be 'not guilty.'"

"3. Statements alleged to have been made by the accused to officials or agents of the Government after arrest, unless prefaced by a warning that answers thereto would be used against the accused, must not be considered by the jury in determining the guilt of the accused."

(Exception noted for the defendants to the refusal of points 1 and 3, which were not read, jointly and individually, by direction of the court.)

Mr. Nelson: I would draw your Honor's attention to that part of your charge in which you were defining conspiracy, and in which in your endeavor to make it clear to the jury you said "common thought, common object and common desire." What I am afraid of, if I may suggest it to your Honor, is that the repetition of those words

431 "object, thought and desire" would tend to make the jury think that the law was, if they had a common thought, as, for instance, pacifism, then they would be guilty because something happened, because they all had the same common idea.

The Court: I understand.

Mr. Nelson: My thought was, if you will bear with me a moment, that it is not merely a concurrence in a common desire, or thought, but there must be some sort of an accomplishment agreement, either tacit or understood. I do not want to put the words into your Honor's mouth.

The Court: I think that is a precaution well suggested.

Gentlemen, let me make that clear to you. It is not enough that there be a community of desire, that general thought, among people to justify their being convicted of conspiracy. Conspiracy is an act committed eventually. These people must have acted together by some agreement, as counsel has very well said, tacit or otherwise, and you must be convinced that they were acting together in a concerted

action in "team work," as the phrase has been used to express it, doing the thing together in this concert of action, plus the thought that, having combined together, as I have said already to you, one or more of them must have done some act to effect the common object. The mere fact that there was anything in common between them, general desire or general thought or general wish or general purpose is not enough. There must have been a concert of action and an arrangement, tacit or otherwise, between and among them, to have
 432 a concert of action.

Mr. Nelson: One other thought, your Honor. I do not wish to discuss it, unless your Honor wants me to. But I would ask for an exception to that part of your Honor's charge in which you say that the jury may call on its general knowledge, and then they could determine, for instance, the question of whether or not we are now at war from their general information, something, in the phrase of the law, that the law takes judicial notice of, and then going down further you said that they could, through the general character of the publications, and from their general knowledge, determine what these publications were intended for.

(Exception noted for the defendants as requested, individually and jointly, by direction of the court.)

The Court: I will not unless you and counsel for the Government desire me to do so, give further instructions upon that point. I think it is sufficiently clear to the jury. I will allow you an exception to what the court said as to that.

Mr. Nelson: I do not remember the exact words.

The Court: There was that thought conveyed to the jury.

Gentlemen of the jury, I want to say this to you, that the rules by which we are all bound require counsel, in the presence of the jury, to take their exceptions to anything in the charge, and I do not want
 433 you to get the feeling that counsel in taking his exceptions has delayed you or held you from a consideration of the case.

He did it because the law required him to do so in order to get the benefit of the exceptions, which he has a perfect right to take.

You may take the case and dispose of it.

(By agreement between counsel for the United States and the defendants, the indictment and the exhibits go out with the jury.)

At 4.15 P. M. the jury retired.

Court adjourned until Friday, October 4th, 1918, at 10 o'clock A. M.

434

Fourth Day.

UNITED STATES

vs.

STILSON and SUKYS.

Philadelphia, Pa.,

Friday, October 4, 1918—10 A. M.

Present: Parties as before noted.

The Clerk: Gentlemen of the jury, have you agreed on your verdict?

The Foreman: We have.

The Clerk: How say you?

The Foreman: Guilty.

The Clerk: As to both defendants?

The Foreman: As to both defendants. Both indictments.

The Court: Both counts of the indictment?

The Foreman: Both counts of the indictment.

The Clerk: Gentlemen of the jury, harken unto your verdict as the court hath recorded it, in the issue joined in the indictment between the United States and Joseph B. Stilson and Joseph Sukys, you say you find them both guilty, as to both counts, and so say you all?

The Jurors responded: "We do."

Mr. Nelson: May it please the court, I move now that the jury be polled.

The Clerk: Juror No. 1, please stand up. How say you?
435 Do you find the defendants Joseph V. Stilson and Joseph Sukys guilty as to both counts in the indictment?

Juror No. 1: I do.

Mr. Nelson: I object to the form in which it is placed by the clerk. I ask for the individual verdict of each juror in the same way that the foreman was asked as to the verdict.

Mr. Roberts: I suppose technically that is right. Each one should be asked what his verdict is.

The Court: As if it were an individual verdict.

The Clerk: Juror No. 1, have you agreed on your verdict?

Juror No. 1: We have.

The Clerk: How say you? Do you find the defendants Joseph V. Stilson and Joseph Sukys guilty or not guilty?

Juror No. 1: I do.

The Clerk: How do you find as to the counts in the indictment?

The Court: I think that is a sufficient answer.

Mr. Roberts: A general verdict, I understand, is a verdict on all the counts under the United States practice.

The Court: If you wish it, you may have it as to count No. 1 and as to count No. 2.

Mr. Roberts: If there is any question about it, I would rather have it that way, too.

Mr. Nelson: In view of the fact that I asked for a severance at the beginning of this case, I ask that the jury be polled with
436 regard to each defendant.

The Court: Just ask the question, then, as to each one of these defendants separately, and ask the jurors as to each count separately.

The Clerk: Juror No. 1, how say you as to the defendant Joseph V. Stilson? Do you find him guilty or not guilty?

Juror No. 1: Guilty.

The Clerk: And as to count No. 1?

Juror No. 1: Guilty.

The Clerk: As to Count No. 2?

Juror No. 1: Guilty.

The Clerk: And as to the defendant Joseph Sukys?

Juror No. 1: Guilty.

The Clerk: And as to the counts in the indictment. Count No. 1?

Juror No. 1: Guilty.

The Clerk: As to Count No. 2?

Juror No. 1: Count No. 2, guilty.

The Clerk: Juror No. 2, how say you, do you find the defendants Joseph V. Stilson and Joseph Sukys guilty or not guilty?

Juror No. 2: Guilty.

The Clerk: As to the Counts in the indictment?

Juror No. 2: Guilty.

The Court: Poll each juror separately. Ask him as to
437 each defendant separately.

The Clerk: As to the defendant, Joseph V. Stilson——

Mr. Nelson: Pardon me one moment, but I do not want unnecessarily to delay it. It is only for the purpose of my clients' case. Perhaps it would shorten it up if you would say as to both counts. That will shorten it up.

The Clerk: How do you say as to both counts?

Juror No. 2: Guilty.

The Clerk: Guilty as to both defendants?

Juror No. 2: Yes.

The Clerk: Juror No. 3, how say you as to the defendants Joseph V. Stilson and Joseph Sukys?

Juror No. 3: Guilty.

The Clerk: And as to both counts?

Juror No. 3: Guilty on both counts.

The Clerk: And as to both defendants?

Juror No. 3: Both defendants, guilty on both counts.

The Clerk: Juror No. 4, how say you?

Juror No. 4: Guilty.

The Clerk: Guilty as to Joseph V. Stilson and Joseph Sukys?

Juror No. 4: Guilty.

The Clerk: And as to both counts in the indictment?

Juror No. 4: Guilty.

The Clerk: Juror No. 5, how say you as to Joseph V. Stil-
438 son and Joseph Sukys, the defendants?

Juror No. 5: Guilty.

The Clerk: And as to both counts in the indictment?

Juror No. 5: Guilty.

The Clerk: Juror No. 6, how say you as to the defendants Joseph
V. Stilson and Joseph Sukys? Do you find them guilty or not
guilty?

Juror No. 6: Guilty.

The Clerk: And as to both counts in the indictment? .

Juror No. 6: Guilty.

The Clerk: Juror No. 7, how say you as to the defendants Joseph
V. Stilson and Joseph Sukys?

Juror No. 7: Guilty.

The Clerk: And as to both counts in the indictment?

Juror No. 7: Guilty.

The Clerk: Juror No. 8, how say you as to the defendants Joseph
V. Stilson and Joseph Sukys?

Juror No. 8: Guilty.

The Clerk: And as to both counts in the indictment?

Juror No. 8: Guilty.

The Clerk: Juror No. 9, how say you as to the defendants Joseph
V. Stilson and Joseph Sukys?

Juror No. 9: Guilty.

The Clerk: And as to both counts in the indictment?

Juror No. 9: Guilty.

The Clerk: Juror No. 10, how say you as to the defendants
439 Joseph V. Stilson and Joseph Sukys?

Juror No. 10: Guilty.

The Clerk: And as to both counts in the indictment?

Juror No. 10: Guilty.

The Clerk: Juror No. 11, how say you as to the defendants Joseph
V. Stilson and Joseph Sukys?

Juror No. 11: Guilty.

The Clerk: And as to both counts in the indictment?

Juror No. 11: Guilty.

The Clerk: Juror No. 12, how say you as to the defendants Joseph
V. Stilson and Joseph Sukys?

Juror No. 12: Guilty.

The Clerk: And as to both counts in the indictment?

Juror No. 12: Guilty.

The Clerk: And so say you all.

Mr. Nelson: May it please the court, I move first for a new trial,
and I move secondly for arrest of judgment, and ask your Honor to
give me the usual time which is, I believe, four days, to file formal
reasons for a new trial.

The Court: That is allowed, and with leave to file additional
reasons at any time before the argument.

Mr. Roberts: If your Honor pleases, your Honor having allowed

that motion, I move you, sir, that bail be fixed for the defendants pending that motion.

440 Mr. Nelson: I think the bail is \$10,000 in the case of Stilson and \$1500 in the case of Sukys.

Mr. Roberts: I will not ask to have it increased, then, sir, unless your Honor sees some reason so to do. If it is \$10,000, I will not ask to have it increased, but I will ask to have Stilson held in \$10,000 bail, or whatever his bail has been before, pending the motion. As to Mr. Sukys, there is cash bail fixed by himself, and I will not ask to have that increased.

Mr. Nelson: If the bail is \$5,000 for Stilson, and I am only guessing at this, this is my impression—if the bail is \$5,000——

The Court: You had better determine that definitely.

Mr. Roberts: It is \$10,000, Mr. Rosenbaum informs me. He has knowledge of it. It certainly is not too much in a case of this kind, where a motion for a new trial is pending, and the jury has found him guilty, sir. If he has found it once, it would seem reasonable that he can find it again.

Mr. Nelson: I think it is the usual practice to hold a defendant in the bail under——

The Court: I do not understand there is any motion to increase the bail.

Mr. Roberts: No, there is no motion, sir, provided it is fixed at \$10,000.

441 The Court: If there is any question as to the amount, you had better ascertain it definitely, unless Mr. Rosenbaum knows.

Mr. Roberts: Mr. Rosenbaum says it is \$10,000 in the case of Stilson and Sukys' bail is \$1500. I think I will have to ask that Sukys' bail be increased to \$5,000. It does seem to me that \$1500, on consideration, is somewhat small, and I am under a responsibility here, and it is pretty serious, and I will ask to have it increased to \$5,000, which does not seem unreasonable, under the circumstances.

The Court: It may be or it may not be. According to the man's circumstances.

Mr. Roberts: Yes, that is true.

The Court: That enters into it so largely that I, for the present, do not feel that it would be wise to pass upon it. You consider the matter between yourselves, and if you are not able to adjust it, then you may make an application.

Mr. Roberts: We will come to you, sir.

Mr. Nelson: In the case of Sukys, your Honor, originally the Grand Jury had not found a true bill against him, and afterwards a true bill was found against him, and I, as his attorney, was approached by the District Attorney's office and asked would he come down here to enter up bail. We then agreed that \$1500 was to be the amount. The man was to put up his own bail. He came down here and put up cash bail of \$1500.

Mr. Roberts: He would have come down here under a bench war-

442 rant if he had not come down willingly. That is no credit to the man.

Mr. Nelson: After I had been "tipped" off, he might have run away.

Mr. Roberts: Mr. Nelson says he might have run away. That is what I am bothering about myself.

Mr. Nelson: I came to him and told him that they wanted him to put up \$1500 bail, and he came down here and did it.

The Court: I will leave the matter as it is, and if there is any difficulty about making an arrangement, then you may bring it up.

Mr. Nelson: If Mr. Roberts insists on \$5,000 from a poor man making \$20 a week, when he came down here voluntarily and put up \$1500, I am afraid we cannot agree.

Mr. Roberts: He may have wealthy friends.

The Court: We had better not cross that bridge until we reach that it. That is always a wise precaution.

443 And thereupon, the counsel for the said defendants did then and there except to the aforesaid charge and opinion of the said Court, and inasmuch as the said charge and opinion, so excepted to, do not appear upon the Record:

The said counsel for the said defendants did then and there tender this Bill of Exceptions to the opinion of the said Court, and requested the seal of the Judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid Judge at the request of the said counsel for the defendants did put his seal to this Bill of Exceptions, pursuant to the aforesaid statute in such case made and provided, this 6th day of December, 1918.

OLIVER B. DICKINSON, [L. S.]
Judge U. S. Dist. Court, E. D. of Pa.

Approved as to form.

OWEN J. ROBERTS,
Special Asst. Dist. Attorney.

Dec. 6th, 1918.

444 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1918.

No. 114.

UNITED STATES OF AMERICA

vs.

JOSEPH V. STILSON, JOSEPH SUKYS, K. VIDIKAS, and
J. V. STALIORAITIS.

Indictment.

Opinion.

Sur Motion in Arrest of Judgment and for a New Trial.

(Filed Nov. 26, 1918.)

DICKINSON, J.:

The spirit of frank and candid discussion of the legal merits of the case and defence which have been manifested throughout by counsel not only justifies but calls for full consideration of all the points which counsel deem worthy of discussion. We shall, therefore, follow the line of thought presented by the arguments, although discussing the points involved in a somewhat different order.

1. First with respect to the second point (Reason 5) discussed by counsel. The defendants asked for a severance at the trial. Following the denial of this motion, a demand was made for the allowance of peremptory challenges to the limit, which would have been allowed in the aggregate had the defendants been separately tried. Perhaps the only comment for which this reason for a new trial calls is afforded by that made by counsel in moving for the severance and demanding on behalf of each defendant the full number of challenges given by the Act of Congress to all of the defendants
445 jointly. The comment in effect was that it was made with the knowledge that the unbroken practice in the trial of cases in the Courts of the United States was in line with the denial of the motion and of the claimed right of challenge. This was accompanied with an expression of the expectation of counsel that the trial judge would feel constrained to follow these precedents. This expectation was realized. As the trial judge did not feel at liberty to depart from the established practice, and as the same view is still entertained, no discussion of the principles of law involved seems to be called for inasmuch as it is deemed unnecessary to vindicate a practice authoritatively established. Any relief to which the defendants may feel themselves entitled must be accorded by an appellate court.

2. Again, with respect to the question of the constitutional freedom of the press being involved, which is discussed by counsel as point 6 (Reason 9). This may be passed with a very apt quotation

from the brief of counsel. It is there recognized that so far as a trial court is concerned, the question has been settled, but it is raised because (and here comes in the quotation) "hope springs eternal in the human breast," and the hope is expressed that the line of cases which admittedly rule the question against the defendants may be overruled. This Court, however, is, of course, not asked to overrule them.

3. The point discussed as point 3 (Reason 6) calls for nearly the same comment. A search warrant has been regularly issued, under the authority of which paper and things has been seized. These were subsequently offered in evidence. One of the defendants made certain statements at the time of the visit of the officers of the United States in serving the warrant.

446 It is not denied (in fact is almost categorically conceded) that the weight of authority at least (to quote the briefs submitted) justifies the admission of the evidence which was admitted. Several additional observations may be made. The papers which were seized were so seized not only by authority of a warrant for the purpose regularly issued, but they were not the papers of the defendants but of the publishing corporation. Again, the papers consisted in the main of the files of the Kova publication, and the seizure was of little practical importance beyond the facility thereby afforded the authorities to examine the publications as they chronologically appeared and saved them the time and trouble of collecting them elsewhere.

A like observation may be made as to the admissions made by the defendants. They were admissible because clearly voluntary. The presence or absence of this finding is admittedly the test of admissibility, and the finding is not in question. Here again the point is robbed of all practical value because of the circumstance that the fact admitted was not real controversy and was independently proved.

Sparf vs. U. S., 156 U. S., 51.

Brant vs. U. S., 168 U. S., 532.

4. This brings us to a consideration of those reasons for a new trial which present the substantial defence interposed. The defence is that there was no evidence to justify a finding that the defendants were engaged in a conspiracy to have committed the acts which admittedly are offences condemned by the Espionage Law. Without going into details there was the publication of the paper known as

447 Kova, which not only contained articles which in themselves were violations of the law, but which in their whole tone and spirit and in the tone and spirit of the publication itself evidenced a defiance of the law and a purpose to oppose the operation of the law. In addition to this, there were other publications in the form of pamphlets or circulars which in every line breathed sedition.

The connection of one of the defendants with the commission of these acts was directly and clearly shown. The authorship of some of the articles and circulars was traced to him with satisfying directness. He was shown further to have been a party to the publication

and circulation of others. This evidence went to the overt acts averments.

The distinction between the crime of conspiracy and the commission of the offences which are the object of the conspiracy is clear enough, and sight of this should not, of course, be lost. When, however, offences against the law are being committed and are of such a character that they are necessarily the fruit of concert of action, all who participate in the things which are done, resulting in the act which is of this common product character, may, if the inference fairly arises out of everything which has been done, be found guilty of a conspiracy to do what has been done. It is, of course, true that the connection may have been such as to justify no more than a suspicion of participation in the conspiracy and may evidence nothing more than a knowledge that the offences were being committed, or of an intention on the part of others to commit them. Neither evidence which would warrant such a suspicion nor a finding of the fact of such knowledge would in itself afford a sound basis for a finding of the guilt of conspiracy, but if, in addition to the knowledge, there is evidence of a participation in or connection with
448 the acts which are committed, and this participation or connection was an intentional act, it may support a finding of guilt.

The point is made that so far, at least, as the defendant Sukys is concerned, there was nothing upon which to base a finding that he was a participant in anything in the nature of a conspiracy beyond the fact that he had to do with the mechanical work of getting out the paper, and the doctrine which was announced in *U. S. vs. Newton*, 52 Fed., 275, is invoked as applicable to his case. When anything which is the common product of several persons is done that there are gradations or differences of degree in the guilt of those involved, may be clear enough. It is also true that the participation of some of those involved may be so casual or so perfunctory or be of such an irresponsible character as that they cannot be said in any real sense to be parties to a conspiracy to do the thing which has been done. Such a finding, however, is essentially a fact finding and is to be determined by the triers of fact.

Bringing the discussion of the principle involved from its statement in the abstract to its application to this concrete case, the evidence against the defendant Sukys was such that the trial Judge would not have been justified in withdrawing the case against him from the consideration of the Jury, but required the submission of it as it was submitted under what we still think to have been adequate instructions to the jury to enable them to pass upon the question of his guilty participation in what was done, and in consequence, his connection with the conspiracy, which the jury found to exist. After a verdict of guilty, the same reasons which controlled the trial Judge in submitting the question forbid an interference with the verdict. There remains, of course, the duty of giving all the considerations which affect this particular defendant their due weight in imposing sentence.

449 5. In the supplemental paper book which has been submitted, the point is made that the indictment under which the defendants were tried is bad for duplicity. The proposition of law that it is bad pleading to incorporate in one count two offences made such by different statutes and calling for different measures of punishment is a proposition, the soundness of which must be admitted.

Ammerman vs. U. S., 216 Fed., 326.

This admission, however, does not carry with it the further admission that the principle is applicable to this indictment.

The first count presents the fact of the United States being in a state of war, and that during the time of the existence of this state the defendants entered into a conspiracy to have committed certain acts which at such a time were offenses against the law. One of them was the offense of causing insubordination. Another was to obstruct enlistments, and it further charges that in pursuance or furtherance of this unlawful conspiracy, the defendants committed certain overt acts, and indicates the conspiracy charge to be that which is defined and the punishment of which is provided for in Section 4 of the Act of June 15, 1917.

The second count differs from the first in that it charges that the object of the conspiracy was to bring about the offence of inducing men in the military service to desert, the offence being that defined and the punishment of which is provided for in the Fifth Section of the Act of May 18, 1917.

It is true that we have two Acts of Congress declaring and defining the offence of conspiracy. One is that which was re-enacted in the 1909 Criminal Code. The other is that which is to be found
450 in Section 4 of the Act of June 15, 1917. A conspiracy to have committed any of the acts which are offences against the law in the Act of June 15, 1917 would have been, within the limitations imposed, an offence against the law under the Criminal Code provision of 1909. The two enactments are substantially the same in their provisions, Section 4 of the 1917 Act being a re-enactment of the Act of 1909, except that its provisions are limited to the acts declared by that Act to be offences, while the Act of 1909 applies to any act which is an offence against the law. It would not, we assume, be asserted that an indictment charging a conspiracy to have committed any of the offences defined in the Act of June 15, 1917 would not have been good under Section 4 of that Act. It would not, we assume again, be asserted that an indictment for a conspiracy to have committed the offences defined in the other sections of the Act would not have been a good indictment under the provisions of the Act of Criminal Code of 1909 if there had been no Section 4 in the Act of 1917.

The offence which the defendants are charged to have conspired to have committed by the second count of the indictment is an offence defined by the Act of May 18, 1917, and is, we think, properly charged as an offence against the 1909 enactment. In the sense intended by counsel, the charge of conspiracy in Count 1 is in legal indictment a different offence from the conspiracy charge in Count 2. Had the two offences been charged in one count of the indictment, the

count would have been bad for duplicity, and on demurrer would have been so held. It does not follow, however, that an indictment charging the two offences in separate counts would be open to the same criticism. The question might, of course, be raised by demurrer, and in a sense may be now raised. In view of the provisions, 451 however, of Section 1025 of the Revised Statutes, counsel exercised, we think, good judgment in not so raising it. In every real case there is a substantial question of law or fact presented for discussion. Sometimes issues of law and fact are both raised. Sometimes good tactics as well as strategy on the part of counsel calls upon them to bring the stress to bear on one issue and sometimes on the other. When, however, the real issue is one of fact, it is usually the part of wisdom in counsel to meet it as such and not to obscure the substantial issue through and by raising questions of procedure. There are times, of course, in which the opposite tactics may be wise, but they are exceptional.

Obedying the injunction of Section 1025, we must now apply to this indictment the test there prescribed. Applying this test, we are unable to find that there was anything in the form of this indictment which tended "to the prejudice of the defendants." This conclusion is uninfluenced by any of the cases to the effect that the door is closed against the objection now urged because not made before plea and trial. It is put upon the broad ground that the form of the charge played no part in the trial of the case, and because of this did not injuriously affect the defendants. If counsel upon a back view of the events of the trial had changed their minds, and now think anything could have been gained by raising *on* objection, which they before thought would not have been to the advantage of the defendants to have raised, and were able to show that the defendants had been prejudiced by anything in the form of the indictment, the time of making the objection would not influence us. We are, however, strongly of opinion that counsel exercised good judgment in what they did, and that the defendants were not prejudiced thereby. The case was tried on its fact merits and in a very gratifying atmosphere of fairness and of candor throughout. 452

The argument addressed to us is in effect that the objection now under discussion would not have pertained to the case if the second count had been abandoned or withdrawn. A verdict upon an indictment containing only the first count would thus admittedly have been good and this count will support the verdict in the eyes both of the law and of substantial justice.

6. The position that there must be evidence of a conspiracy before overt acts of some of the conspirators can be shown is well taken. We think, however, this principle was recognized and applied in the trial of the case.

It would give undue length to this already over long opinion to discuss the evidence in order either to point out what evidence there was of conspiracy or to discuss the other point of what evidence there was to connect Sukys with it, nor do we see occasion to discuss the objections which have been urged to the charge of the court beyond making one or two observations. This brings us to the final point

in support of the reasons for a new trial which voice objections to what the trial Judge said to the jury.

7. As to the connection of Sukys with the newspaper publication, he had written himself down as the individual who was responsible for that publication. This act, as any other act, was open of course to explanation, and it cannot be denied that the explanation given might well go far in the direction of reducing the degree of his criminality. In the face of this, however, and the other evidence in the case, no trial judge could have been supported in a refusal to submit the evidence for the consideration of the jury. The consideration which it should receive has already been intimated as one having an important bearing upon whatever sentence should be imposed upon the defendants. The trial Judge did not feel called upon to
453 advert to this feature of the defence in the charge because it had been fully, clearly and with marked ability discussed by counsel.

With respect to the charge of the Court, this observation is to be made. Every charge to the jury, which is a real charge and not merely a colorless statement of the law and of the issues of fact involved, ought to reflect the real issue arising out of the evidence, and also as presented in the arguments addressed to the jury. It can never be rightly interpreted unless it is read in the atmosphere of the trial. If the parties in presenting their cause strip it of all formalities and technical distinctions and get right down to the marrow of the case and to a discussion of the substantial questions involved, it is not only helpful to the jury but inevitable that the charge should reflect the same spirit. There can never be applied to a charge under such circumstances the canons of criticism to which a treatise on the law of the case could properly be subjected. The attempt was made in the charge to direct the attention of the jury to the distinction between something which had been made an offence against the law and a conspiracy to have that offence committed. It was therefore impressed upon the jury that it was necessary for them to find not merely a conspiracy but a conspiracy to have a crime committed and this carried with it the further necessity of making clear the essentials of the crime to commit which the defendants were charged with having conspired. We do not see that this was confusing to the jury, and on the contrary, think it was helpful to them.

The rule for a new trial is discharged, and the United States may move for judgment on the verdict and sentence.

454 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1918.

No. 114.

UNITED STATES OF AMERICA

vs.

JOSEPH V. STILSON, JOSEPH SUKYS, K. VIDIKAS, and
J. V. STALIORAITIS.

Judgment.

Before Dickinson, J.

And Now, to wit: this 6th day of December, 1918, all and singular the premises being seen and by the Court here fully understood, it is considered and adjudged that the defendant Joseph V. Stilson be imprisoned and confined in the Maryland State Penitentiary, at Baltimore, Md., for the term of three years from this 6th day of December, 1918, and stand committed until judgment be fully complied with.

By the Court:

Attest:

GEORGE BRODBECK, *Clerk.*

455 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1918.

No. 114.

UNITED STATES OF AMERICA

vs.

JOSEPH V. STILSON, JOSEPH SUKYS, K. VIDIKAS, and
J. V. STALIORAITIS.

Judgment.

Before Dickinson, J.

And Now, to wit: this 6th day of December, 1918, all and singular the premises being seen and by the Court here fully understood, it is considered and adjudged that the defendant Joseph Sukys be imprisoned and confined in the Mercer County Jail at Trenton, N. J., for the term of three months from this 6th day of December, 1918, and stand committed until judgment be fully complied with.

By the Court:

Attest:

GEORGE BRODBECK, *Clerk.*

456 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1918.

No. 114.

UNITED STATES OF AMERICA

VS.

JOSEPH V. STILSON, JOSEPH SUKYS, K. VIDIKAS, and
J. V. STALIORAITIS.

Petition for Writ of Error.

(Filed Dec. 6, 1918.)

And now comes Joseph V. Stilson, one of the defendants herein, and says:

That on or about the 6th day of December 1918, the District Court entered judgment herein in favor of the plaintiff and against this defendant, whereby this defendant was sentenced to three years' imprisonment, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the Assignment of Errors which is filed with this Petition.

Wherefore this defendant prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

(Sgd.) HENRY J. GIBBONS,

(Sgd.) HENRY JOHN NELSON,

By HENRY J. GIBBONS,

(Sgd.) SEYMOUR STEDMAN,

By HENRY J. GIBBONS,

Attorneys for Defendant.

457 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1918.

No. 114.

UNITED STATES OF AMERICA

vs.

JOSEPH V. STILSON, JOSEPH SUKYS, K. VIDIKAS, and
J. V. STALIORAITIS.

Petition for Writ of Error.

(Filed Dec. 6, 1918.)

And now comes Joseph Shukys, on of the defendants herein, and says:

That on or about the 6th day of December 1918, the District Court entered judgment herein in favor of the plaintiff and against this defendant, whereby this defendant was sentenced to three months' imprisonment, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the Assignment of Errors which is filed with this Petition.

Wherefore this defendant prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

(Sgd.) HENRY J. GIBBONS,

(Sgd.) HENRY JOHN NELSON,

By HENRY J. GIBBONS,

(Sgd.) SEYMOUR STEDMAN,

By HENRY J. GIBBONS,

Attorneys for Defendant.

458 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1918.

No. 114.

UNITED STATES OF AMERICA

VS.

JOSEPH V. STILSON, JOSEPH SUKYS, K. VIDIKAS, and
J. V. STALIORAITIS.

Order Allowing Writ of Error.

(Filed Dec. 6, 1918.)

This 6th day of December, 1918, comes the defendant, Joseph V. Stilson, by his attorneys, and files herein and presents to this Court his Petition praying for the allowance of a writ of error and an assignment of errors intended to be urged by him, praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

In consideration whereof the Court does allow the writ of error upon the defendant giving bond according to law in the sum of \$10,000.00, which shall operate as a supersedeas bond.

By the Court:

DICKINSON, J.

459 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1918.

No. 114.

UNITED STATES OF AMERICA

VS.

JOSEPH V. STILSON, JOSEPH SUKYS, K. VIDIKAS, and
J. V. STALIORAITIS.

Order Allowing Writ of Error.

(Filed Dec. 6, 1918.)

This 6th day of December, 1918, comes the defendant, Joseph Shukys, by his attorneys, and files herein and presents to this Court his Petition praying for the allowance of a writ of error and an assignment of errors intended to be urged by him, praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to

the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

In consideration whereof the Court does allow the writ of error upon the defendant giving bond according to law in the sum of \$1,500.00, which shall operate as a supersedeas bond.

By the Court:

DICKINSON, J.

460 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1918.

No. 114.

UNITED STATES OF AMERICA

VS.

JOSEPH V. STILSON, JOSEPH SUKYS, et al.

Assignments of Error of Joseph V. Stilson.

(Filed Dec. 6, 1918.)

The defendant in this action, Joseph V. Stilson, in connection with his Petition for a Writ of Error, makes the following Assignments of Error, which he avers occurred upon the trial of the cause, to wit:

I. The Court erred in refusing to grant a new trial to the defendant.

II. The Court erred in refusing to sustain a motion in arrest of judgment.

III. The Court erred in refusing to grant a severance, so that the Defendant, Stilson, might be tried separately from the defendant, Shukys (testimony pages 2 and 3), as follows:

"Mr. Nelson: May it please the Court, now that the defendants have been arraigned, and plead 'Not guilty,' and are at the bar of the Court, I move your Honor to grant them a severance in this trial.

"Mr. Roberts: If your Honor please, this is an indictment for conspiracy, and they, too, are indicted as conspirators together with others, and I think this has not even the merit of being an application as to a bill containing separate counts. There are no separate counts here whatever.

"The Court: Mr. Nelson, the almost unvarying practice is not to grant a severance. If there is any special reason for it—

"Mr. Nelson: I know, your Honor, it is within your discretion, and it is not because they are conspirators that I ask this. That would be rather against me, but—

"Mr. Roberts: I say it is an indictment for conspiracy. I have not said they are conspirators yet.

461 "Mr. Nelson: Because it is an indictment for conspiracy—that is not my reason. It is because I desire to examine the jury of the panel on its voir dire, and I know that a certain number

of challenges are allowed, and I would like to exercise these challenges on behalf of each individual defendant, although I know that the practice and the decisions of the Court are against it, not to allow a severance on that account, still, as I feel that it is a violation of the Constitutional rights of these defendants, I ask for the severance.

"The Court: Have you sufficiently stated your ground?

"Mr. Nelson: Yes. That is my ground.

"The Court: The motion is disallowed, and an exception noted for the defendants, individually and jointly, and the notes may show, where an exception is allowed jointly, it is understood to be allowed to the joint and individual benefit of both defendants, unless otherwise stated at the time.

"(Exception noted for the defendants, individually and jointly, by direction of the Court.)"

IV. The Court erred in not sustaining challenge for cause during the selection of the jury of juror No. 55, Jacob H. Lamor (testimony, pages 322-325), as follows:

"No. 55. JACOB H. LAMOR, sworn on his voir dire.

"By Mr. Roberts:

"Q. This is a prosecution under the espionage act of the United States against these men for a conspiracy to violate the act, and to say things which were calculated to hinder the United States in raising its army, to hinder the recruiting and enlistment service of the United States, and to aid the enemies of the United States. These men are said to be members of a Socialist organization, and to have Lithuanian blood or to be of Lithuanian descent. Have you ever heard of the case?

"A. I have not.

"Q. If you were sworn as a juror in this case do you feel, as a good American, you could try the case solely on the evidence and the facts and the law as produced in this case?

"A. I do.

"Q. Would the fact that these men are Lithuanians, if they are such, or Socialists, cause you to acquit them if you thought them guilty, or cause you to convict them if you thought them innocent, on the evidence?

"A. No sir.

"Cross-examination.

"By Mr. Nelson:

"Q. Whom do you work for?

462 "A. Kirk, Foster and Company.

"Q. What business are they in?

"A. Wholesale grocers.

"Q. And you have no prejudice against Socialists as such, so that it would interfere with your judgment in rendering a verdict, according to the law and the evidence?

"A. I have not.

"Q. When I asked you if you had any prejudice against Socialists, what did you take my question to mean?

"A. I take it to mean that if I am prejudiced against Socialism in general.

"Q. Yes, but what do you understand when I ask you about Socialism?

"A. Why, when you ask about Socialism I take it that——

"Q. What is Socialism, according to your opinion?

"A. Well, a person whose mind is biased along certain lines.

"Q. And along what lines, for instance?

"A. Well, for instance, they have an idea—a person who has the idea that they have certain rights and certain things that belong to them. They feel they should have them whether they are justified in having them or not.

"Mr. Nelson: The juror is challenged by the defendants for cause.

"Mr. Roberts: I object to the challenge for cause.

"Mr. Nelson: The answer of the witness, your Honor, shows that in his opinion Socialists are people who do things which are not justifiable.

"Mr. Roberts: That was not what he said.

"Mr. Nelson: He shows by his answer that they are biased in certain things, and when I asked him further he said——

"The Court: I think we understand the witness. We are all biased in favor of our own predilections, no matter what our political convictions are.

"Mr. Roberts: I suppose a Democrat would say a Republican was biased, and a Republican might say a Democrat was biased.

"The Court: To be perfectly frank, I think each one of them would own up to being biased.

"Mr. Nelson: Further, your Honor, he said Socialists were people who wanted things, whether they were justified in having them or not.

463 "The Court: That does not mean any more than this, I assume, that they think, from their point of view, they are right, and that they insist upon having what they want, notwithstanding other people do not think as they do.

"Mr. Nelson: Further, the witness shows by his answer that he does not know what Socialism is.

"Mr. Roberts: If that is to disqualify jurors, if they cannot define Socialism, then it disqualifies everybody in the court room, probably, because I would not want to be stood up and asked to give a correct definition of Socialism.

"The Court: In point of fact, Mr. Nelson, with any body of men, who entertain a common belief upon any subject, one of the things as to which they always have to contend is the difficulty in getting other people to have the same conception of their aims and motives

and purposes and beliefs and doctrines as they have themselves. I do not think there is any occasion to have any discussion about it. The challenge is for cause?

"Mr. Nelson: For cause, yes, sir.

"The Court: The challenge is denied, and exception allowed to the defendants.

"(Exception noted for the defendants, individually and jointly, by direction of the Court.)"

V. The Court erred in refusing to permit the peremptory challenge of juror No. 55, Jacob H. Lamor, on behalf of the defendant Stilson, and in ruling as follows (testimony, page 325), as follows:

"Mr. Nelson: Then, sir, I challenge on behalf of the defendant Stilson individually. The juror is satisfactory to the defendant Sukys.

"The Court: Upon that I rule that a peremptory challenge may be allowed for the defendants, but it is a challenge on behalf of the defendants as if there was but one party defendant. I will allow the challenge, but accompany it with the ruling, that it is for the benefit of both defendants, and counts as against both defendants, and, so far as the ruling is a qualification of your right of peremptory challenge, I give you an exception.

"(Exception noted for the defendants, individually and jointly, by direction of the Court.)"

VI. The Court erred in making the following ruling regarding all peremptory challenges testimony, pages 325 and 326) as follows:

464 "Mr. Nelson: Will your Honor instruct the court stenographer, to save time, that the same ruling may apply in case I should make a similar objection or challenge?

"The Court: Yes, if at any time another peremptory challenge should be made upon behalf of either of the defendants, individually, it is understood that it is subject to the same ruling and allowance of the same exception."

VII. The Court erred in not directing a verdict for defendant to be entered upon motion at the conclusion of the government's testimony (testimony, page 111) as follows:

"Mr. Nelson: If your Honor please, as a matter of form I am going to make a motion that your Honor dismiss the charges against both the defendants and take the case from the Jury, on the ground, as I have already indicated in objections I have made, that the Government has failed to connect either one of these defendants with either the typewritten circular, mimeographed circular, or with the articles in Kova. I anticipate from what your Honor has already ruled how your Honor will decide the motion, but, as I say, I make that motion now as a pure formality, so as to have your Honor's ruling.

"Motion denied. Exception noted for defendants by direction of the Court."

VIII. The Court erred in the admission of evidence by the plaintiff in the testimony given by the witness, Roy C. McHenry, in substance setting forth his conversation with the defendant, Joseph V. Stilson, on December 7, 1917, in the absence of the witness testifying that he had cautioned this defendant that, if he made any statement, he made it with the knowledge that it might be used against him (testimony, pages 31-34) as follows:

(Mr. Roberts:)

"Q. Did you show the paper that I have just shown you, Government Exhibit No. 23, to any one?

"A. Yes, sir; to Mr. Stilson.

"Q. What did you say to him about it?

"A. I said, 'Mr. Stilson, did you get this paper out that is signed with your name,' and he looked at the last sheet, the third sheet, and he said, 'Yes, I got that out,' and I said, 'Have you any more of them?' And he said, 'No, they are all gone.' And I looked and

I found four or five more copies of the same thing, the same
465 kind of paper.

"Q. You mean down there at the office of Kova you found some.

"A. Yes, right then. I looked around and I found them and I said, 'There are some after all.'

"Q. You had with you at that time a United States Marshal who had a warrant of Search and Seizure, had you not?

"A. Yes, sir.

"Q. That pamphlet there you say is signed. Is it signed in handwriting or typewriting?

"A. It is signed in typewriting.

"Q. It is signed 'J. V. Stilson, S. S. S. Buitais.' Do you know enough about Lithuanian to know what that is?

"A. Yes, sir that is secretary translator.

"Q. Did you ask Mr. Stilson anything about where or how that was made?

"Mr. Nelson: I haven't made any objection so far, but I think now that I ought to object until the witness has been asked whether he had notified the defendant that anything he said might be used against him.

"By Mr. Roberts:

"Q. Just one minute and I will cover that. Had Mr. Stilson before that time, been served with any warrant of arrest?

"A. He had. He was under arrest. Deputy Marshal Kelly had taken him into custody.

"Q. He understood that he was under arrest? Had been so informed?

"A. He understood. We didn't tell him anything that he said would be used against him, but all——

"Mr. Roberts: I call your Honor's attention to the fact that this papers is no paper involved in the indictment at all.

"By Mr. Roberts:

"Q. Did you ask him where that paper had been made?

"A. I said, 'Did you make that paper up?' And he said, 'Yes, I made it on the typewriter.'

"Mr. Nelson: I object.

"The Witness: Then I printed it with the mimeograph.

466 "Mr. Nelson: I object to the testimony that Mr. McHenry is giving now as to what this defendant Stilson or any other defendant said while under arrest, as it is not admissible in view of the fact that Mr. McHenry stated that he had not warned these defendants that anything they might say would be used against them.

"The Court: I think we ought to have it developed whether the statement was made voluntarily or whether it was elicited and, if so, under what circumstances it was elicited.

"Mr. Roberts: Well, I understood you to say, and if I am wrong, correct me, that you showed them this grey paper here.

"The Witness: Yes, sir.

"By Mr Roberts:

"Q. I understand further that you asked him if he made it?

"A. Yes, sir.

"Q. Now then I want to know if he made a connected reply to that and whether what you are going to testify to now was all one reply or whether further questions were asked him and he made further reply? Do you understand my question?

"A. He said, 'Yes——'

"Q. I don't want what he said now.

"A. He answered in one response.

"Q. Which is what you are going to tell us now?

"A. All, in answer to that question, yes.

"Mr. Roberts: Now I press the question as to what he said.

"Mr. Nelson: And I press the objection for the reasons already stated.

"Objection overruled. Exception noted for the defendants individually and jointly by direction of the court."

IX. The Court erred in the admission of evidence by the plaintiff in the testimony given by the witness, Horace H. Bolling, in substance as to the conversation had between the witness, Roy C. McHenry, and the defendant, Joseph V. Stilson, on December 7, 1917, regarding the witness saying anything that would tend to incrimi-

467 nate this defendant out of his own mouth, in view of the fact that there was duress after the service of the warrant and that the witness had said nothing to the defendant with regard to using what he might say against him subsequently (testimony, pages 53-55) as follows:

"(Mr. Roberts:)

"Q. Just tell us what the conversation was, as nearly as you can remember it.

"Mr. Nelson: So that I understand, the objection I made to the previous question similar to this applies to this witness now?

"The Court: You may now, if you choose, develop any facts which, in your judgment, would have a bearing upon the question preliminary to the question being asked him. The District Attorney has developed the fact that before the making of the statement he is now about to interrogate the witness on, nothing was said to him, justifying the inference that it was a voluntary statement. If you wish to develop any other facts, you may cross-examine the witness on that point.

"Mr. Nelson: The District Attorney has already developed the fact that this was after the warrant had been served.

"Mr. Roberts: I have developed that from the other witness, Mr. Bolling did not happen to remember that fact, but I am perfectly willing to stand on that. That was proved affirmatively.

"Mr. Nelson: My objection goes only to the fact, that after the serving of a warrant, there is duress, and I think I can find cases that go that far.

"The Court: Yes, you can find cases on both sides of that proposition.

"Mr. Nelson: I object on the ground that there was duress because of the service of this warrant.

"The Court: You will find cases that go farther than that. You can find a line of cases that go to the extent of saying that, *prima facie*, there is coercion. You wish to renew the objection?

"Mr. Nelson: I renew the objection to this witness saying anything that would tend to incriminate these defendants out of their own mouths in view of the fact that, first, there was duress after the service of the warrant, and, second, due to the fact that the witness has said that nothing was said to these defendants with regard to using their words against them subsequently.

"The Court: The objection is overruled and an exception noted for the defendants with leave, after the testimony has been given, if you so desire, to further object to this through and by a motion to strike out.

468 "(Objection overruled.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

X. The Court erred in the admission in evidence of government's exhibit No. 27, which was a yellow sheet testified to have been made

from the same stencil as government exhibit No. 1, known as the "Nezime leaflet," headed, as translated into English, "Let Us Not Go To The Army," (testimony—pages 266-268) with Lithuanian matter endorsed thereon, translated substantially, as follows: "This was distributed at our place one night. Fraternally, J. A. Tusan, 18 Amies Street," (testimony, pages 102 and 103) as follows:

"Mr. Nelson: I object to the introduction of this exhibit, No. 27, on the ground, first, that it is a lefthanded way of making a defendant testify against himself, looking at it from the very best point of view of the Government, and secondly I object to it because the Government has in no way connected either one of these defendants with that piece of paper. It might just as well have been found on the street or in another house. The testimony shows that it was found in the editors' room in a pigeon hole in the back of this building at the other end as far physically as it could be away from where Stilson and Sukys were, and thirdly I object to the introduction of this piece of paper as against these defendants because it shows on its face that it is a paper which was sent to somebody, presumably from the Government's evidence, to one of these editors, Vidikas or Stalioraitis.

"The Court: I will overrule the objection and give the defendants an exception. I will overrule it on the first ground. I see no reason to give the reasons for the ruling. I will overrule it on the second ground because the United States may prove the publication. The question of whether or not the defendants have been connected with it by the evidence is a matter for the determination of the jury. I will overrule it on the third ground for reasons which I do not think it is necessary to state on the record.

"(Objection overruled.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

469 XI. The Court erred in the admission in evidence of government's exhibits Nos. 3, 5, 7, 9, 11, 13, 15, 17, 19 and 21, being, in substance, articles mentioned in the indictment, the offer, however, including the entire issue of the papers in which the article appeared (Testimony, pages 103-105), as follows:

"Mr. Roberts: I also offer in evidence Government's Exhibits Nos. 3, 5, 7, 9, 11, 13, 15, 17, 19 and 21, being the articles mentioned in the Indictment, making the offer, however, of the entire paper in which the article appears, and calling attention to the articles in each case. Unless Mr. Nelson desires it, for the purpose of certainty, I will not take the court's time by mentioning the date of each of these papers, as they are all bound in a bound folder running serially and consecutively, and the dates are charged in the indictment, so that he will not be at a disadvantage in knowing which papers are offered.

"Mr. Nelson: I object to that, sir. First on the same ground as I made the objection just immediately previously, that this is a lefthanded way on the part of the Government to cause a defendant to

testify against himself, namely, by means of a search warrant, seizing everything that they can find in the place, and subsequently using it against the defendants, or endeavoring to use it against the defendants. Secondly, I object to it, because, in my opinion, sir, the Government has not connected either one of these defendants with Kova. Their own witness, Rudaitis, who was employed there, has testified, and they are bound by his testimony, that Stilson was secretary of the Federation, that Sukys was manager, he said, of the Federation, and he did say on one occasion of Kova—he was not clear about that. He testified that neither one of these men had the right to hire or discharge either one of the editors, that they were entirely separate and distinct from the editors, that they had nothing to do with the editorial or news policy of the paper Kova, and this same witness Rudaitis testified further that this Federation, by various processes, either elected or appointed these different individuals, and that these different individuals were individually responsible to the branch of the Federation which either elected or appointed them. To be perfectly fair with the Government, on this point of my objection, the only evidence I can see to connect up these defendants with Kova is the document which was put in evidence here and which was not objected to, from the Post Office, which sets forth the names of the officers of Kova. That is the only thing that the Government has shown really connecting these two defendants.

“The Court: Let me inquire, Mr. Nelson. The copies, which were the production of these machines, as to which we have evidence,—were those articles reproduced in the paper, or were they pamphlets merely?

“Mr. Roberts: Do you mean Government’s Exhibit No. 1, which is the anti-recruiting thing? The mimeographed thing?

470 “The Court: I do not know what it is.

“Mr. Roberts: We complain of the pamphlet.

“The Court: There is evidence here as to certain published manuscripts.

“Mr. Roberts: That is the only one, sir, that we complain of, and that is the first overt act alleged in the indictment.

“The Court: There were two. One I understand is innocuous, and the other is complained of.

“Mr. Roberts: Yes.

“The Court: What I want to know is whether those articles, or either of them—I assume you will ask the jury to find they are the product of these particular machines—whether or not they appeared in the newspapers.

“Mr. Roberts: No, sir, they did not appear in the newspapers.

“The Court: I understand they did not.

“Mr. Nelson: That is the basis of my objection, sir.

“The Court: I will overrule it upon the first ground. I will overrule it also upon the second ground. The record may show that the question of the connection of the defendants, or either of them, with the paper is a question to be determined by the jury. It is not necessary that there be evidence of authorship if the gravamen of the offense, so far as the paper is concerned, is in the publication.

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

XII. The Court erred in the admission in evidence of government's exhibits Nos. 4 (testimony, pages 269-272), 6 (testimony, pages 272-274), 8 (testimony, pages 274-276), 10 (testimony, pages 276-279), 12 (testimony, pages 279-286), 14 (testimony, pages 287 and 288), 16 (testimony, pages 288-290), 18 (testimony, pages 291 and 292), 20, (testimony, pages 293) and 22. (testimony, pages 294 and 295), having been sworn to or testified to be translations of the exhibits previously offered in evidence Nos. 3, 5, 7, 9, 11, 13, 15, 17, 19 and 21 (testimony, page 106) as follows:

"Mr. Roberts: I offer in evidence Government's

471 "Exhibits Nos. 4, 6, 8, 10, 12, 14, 16, 18, 20 and 22, being sworn to or testified to to be translations of the Exhibits last offered in evidence.

"Mr. Nelson: I object to those translations being put in evidence, sir, because they are translations of certain articles appearing in certain papers which I have already objected to.

"(Objection overruled.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

XIII. The Court erred in the admission in evidence of Exhibit No. 25, being one of the issues of Kova, June 1, 1917, calling attention to articles signed by J. V. Stilson (testimony, pages 106 and 107) as follows:

"Mr. Roberts: I also offer in evidence one of the issues of Kova, of June 1, 1917, which has been identified here, but has not yet been offered separately, calling attention to two articles signed by J. V. Stilson, which articles are not copied as overt acts, or charged as such, in the indictment, which articles appear on page two of said issue, being signed by J. V. Stilson, L. S. F. Seki. Vert."

"The Court: Does that mean the official designation?"

"Mr. Roberts: Yes. That means the Lithuanian Socialist Federation, Secretary Translator.

I offer these articles in evidence to show motive, intent and purpose and connection with the purposes of this Federation, and to be taken in connection with an offer immediately to follow, of this entire file of the paper, to show two things, first, that this paper, as has been testified to orally, and by its own admission, was the official organ of this association of which Stilson has been testified to have been the secretary.

"Mr. Nelson: I object to Exhibit No. 25, sir—I object to the introduction of it in evidence, because it did not appear in the indictment, and the defendants had no knowledge that it might be used in evidence, and, therefore, they are more or less unprepared to meet it.

"(Objection overruled.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

XIV. The Court erred in the admission in evidence of government exhibit No. 26 (testimony, pages 302-309 inclusive),
472 being a translation of Exhibit No. 25, (testimony, page 107) as follows:

"Mr. Roberts: I also offer in evidence Government's Exhibit No. 26, which was yesterday identified by Mr. Slikas as a correct translation of the article known as Government's Exhibit No. 25.

"(Objected to.)

"(Objection overruled.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

XV. The Court erred in the admission in evidence of file of newspaper "Kova", starting with issue of May 25th and extending to issue of October 19, 1907, not being intended to cover the contents of the issues except for the purpose of showing the following taken from the first page of the heading (testimony, pages 107 and 108) as follows:—

"Mr. Roberts: I also offer in evidence the file which has been identified as the file of the newspaper Kova, starting with the issue of May 25, and running through to the date of the latest article which is offered as Exhibit, being October 19, 1907, restricting and limiting that offer, however, so as not to put the contents of the issues in evidence, unless the defendants desire to so do, for any purpose, except for the purpose of showing the following, taken from the first page, at the heading:

" 'The Lithuanian weekly 'Kova', published every Friday by the Lithuanian Federation Socialist Party, subscription, in all parts of the world, \$2.00. Advertising rates on application. All communications should be addressed to K. Vidikas, Editor. J. Sukys, Manager.

"Then again, on a new line:

" 'Kova. 229 North 6th Street, Philadelphia, Pa.'

"My offer, except, as I have said, for any use the defendants may care to put the issue to, being limited to that only, and no other matter, in these issues, except the issue in which I have identified the articles, and had them translated, being offered in evidence as substantive matter in this case. I have limited my offer, and I tried to make it clear. I do not know whether I have or not.

473 "Mr. Nelson: I object to the introduction of this for the reasons already stated.

"(Objection overruled.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

XVI. The Court erred in refusing to admit evidence on behalf of the defendant under cross-examination of the government witness, Roy C. McHenry, in substance, regarding the arrest of the defendant, Joseph Sukys, (testimony, pages 49-51) as follows:

"By Mr. Nelson:

"Q. I am going to ask you a question, but do not answer it until Mr. Roberts has a chance to object, if he does want to object.

"A. All right.

"Q. You say Sukys was not arrested at this time. Is that right?

"A. He was not.

"Q. Is it not true that he subsequently was arrested on a charge similar to this, and the Grand Jury did not find a true bill against him?

"Mr. Roberts: I object to that. It is highly improper.

"The Court: What help could that be to us? I do not catch its relevancy. It is not cross examination. The question as to his arrest merely grew out of the misapprehension that you and I were under as to the purpose of the District Attorney in his interrogation of this witness. Your objection assumed that he was about to use something in the nature of a confession, and I suggested the question, in fact I think I asked it myself, as bearing upon that. It appeared that there was no such purpose in the interrogation. So the objection was withdrawn, and everything connected with it fell from under it. Now, of what value is it to know——

"Mr. Nelson: This is another thing. The witness was asked, or as a result of a question the witness said that Sukys was not arrested at this time, and I want to ascertain why he was not arrested.

"The Witness: I can tell you that.

"Mr. Roberts: I do not think he can go into that. I do not think we are interested in that. The purpose of the question is an improper one.

474 "The Court: The query is, in what way will it help us to determine this issue? If it is of the slightest help to us, let us have it, but if it is not of any value to us, isn't it better that our minds should not be distracted by something that does not help us any, to determine this issue?

"Mr. Nelson: Except in this, I want to do all I can for both of my clients.

"The Court: Certainly, and if you can show that it has an effect helpful to them, that is the strongest kind of relevancy and pertinency. That is what the jury should know. But if it does not have and bearing, why go into it? What bearing does it have?

"Mr. Nelson: My thought is this. This is what bearing it has, that if Sukys was not arrested at this time, then apparently, in the eyes of the authorities, nothing had been discovered at that time which would tend to incriminate Sukys, and then it would put the burden on the Government, if it had anything, to show something that had been discovered subsequently. Whether it would have or not I do not know.

"The Court: I do not see that there would be anything that would compel that inference. We have the fact—it is now in the case—that at that time he had not been arrested. That being in the case as a fact, the jury can draw any inference that seems to their minds to

be justified. Now you are asking him whether or not he was arrested at a subsequent time, and what the result of the arrest was. I do not see that it has any bearing. I do not think it is germane as cross examination, to begin with, and I do not think it has any relevancy. So for the present I will sustain the objection and give you an exception. If there is any reason, indicating its relevancy, which occurs to you hereafter, I will permit you to renew the question.

"(Objection sustained.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

XVII. The Court erred in refusing to strike out all testimony of the witness, Roy C. McHenry, regarding conversations with the defendant, Joseph V. Stilson, in the absence of evidence as to whether the statement was made voluntarily or whether after due warning to the defendant that anything he might say would be used against him (testimony, pages 30-34) as follows:

"By Mr. Roberts:

"Q. You are a special agent of the Department of Justice of the United States, are you not?

475 "A. Yes, sir.

"Q. And also a special assistant of the United States District Attorney of the Middle District?

"A. Yes, sir.

"Q. And in your official capacity as such, did Government Exhibit No. 1 which has been here identified by this young man, come to your attention?

"A. Yes, sir.

"Q. About what time?

"A. About the 26th day of August, 1917.

"Q. Did you get it into your possession?

"A. Yes, sir.

"Q. Who has had it in his possession ever since then to the day of this trial?

"A. I have.

"Q. Now Mr. McHenry, as a result of some investigation that you made about the matter, did you come to Philadelphia?

"A. Yes, sir.

"Q. I now show you government exhibit No. 23 which appears to be a Lithuanian pamphlet mimeographed from a typewriter. Did you find that somewhere?

"A. Yes, sir.

"Q. When you came to Philadelphia and made an investigation, did you go to the offices of Kova at any time?

"A. Yes, sir.

"Q. If so, can you give me the date?

"A. December 7, 1917.

"Q. Did you have the paper known as Government Exhibit No. 23 which you now have in your hand with you at that time?

"A. I did.

"Q. Who did you meet at the office of Kova?

"A. I met Mr. Stilson, the defendant there, Mr. Sukys, Mr. Stalioraitis, Mr. Rudlaitis and another man who was working in the office and there were two or three other bystanders who happened to be in there.

"Q. Did you show the paper that I have just shown you, Government Exhibit No. 23, to any one?

476 "A. Yes, sir; to Mr. Stilson.

"Q. What did you say to him about it?

"A. I said, 'Mr. Stilson, did you get this paper out that is signed with your name,' and he looked at the last sheet, the third sheet, and he said, 'Yes, I got that out,' and I said, 'Have you any more of them?' And he said, 'No, they are all gone.' And I looked and I found four or five more copies of the same thing, the same kind of paper.

"Q. You mean down there at the office of Kova you found some?

"A. Yes, right then. I looked around and I found them and I said, 'There are some after all.'

"Q. You had with you at that time a United States Marshal who had a warrant of Search and Seizure, had you not?

"A. Yes, sir.

"Q. That pamphlet there you say is signed. Is it signed in handwriting or typewriting?

"A. It is signed in typewriting.

"Q. It is signed 'J. V. Stilson, S. S. S. Buitais.' Do you know enough about Lithuanian to know what that is?

"A. Yes, sir that is secretary translator.

"Q. Did you ask Mr. Stilson anything about where or how that was made?

"Mr. Nelson: I haven't made any objection so far, but I think now that I ought to object until the witness has been asked whether he had notified the defendant that anything he said might be used against him.

"By Mr. Roberts:

"Q. Just one minute and I will cover that. Had Mr. Stilson before that time, been served with any warrant of arrest?

"A. He had. He was under arrest. Deputy Marshal Kelly had taken him into custody.

"Q. He understood that he was under arrest? Had been so informed?

"A. He understood. We didn't tell him anything that he said would be used against him, but all—

"Mr. Roberts: I call your Honor's attention to the fact that this paper is no paper involved in the indictment at all.

"By Mr. Roberts:

"Q. Did you ask him where that paper had been made?

477 "A. I said, 'Did you make that paper up?' And he said, 'Yes, I made it on the typewriter.'

"Mr. Nelson: I object.

"The Witness: Then I printed it with the mimeograph.

"Mr. Nelson: I object to the testimony that Mr. McHenry is giving now as to what this defendant Stilson or any other defendant said while under arrest, as it is not admissible in view of the fact that Mr. McHenry stated that he had not warned these defendants that anything they might say would be used against them.

"The Court: I think we ought to have it developed whether the statement was made voluntarily or whether it was elicited, and, if so, under what circumstances it was elicited.

"Mr. Roberts: Well, I understood you to say, and if I am wrong, correct me, that you showed them this grey paper here.

"The Witness: Yes, sir.

"By Mr. Roberts:

"Q. I understand further that you asked him if he made it?

"A. Yes, sir.

"Q. Now then I want to know if he made a connected reply to that and whether what you are going to testify to now was all one reply or whether further questions were asked him and he made further reply? Do you understand my question?

"A. He said, 'Yes,——'

"Q. I don't want what he said now.

"A. He answered in one response.

"Q. Which is what you are going to tell us now?

"A. All, in answer to that question, yes.

"Mr. Roberts: Now I press the question as to what he said.

"Mr. Nelson: And I press the objection for the reasons already stated.

"Objection overruled. Exception noted for the defendants individually and jointly by direction of the court.

"Mr. Nelson: I further move that all of the testimony that was given in this line of examination prior to my objection be stricken out.

"Objection denied. Exception noted for the defendants individually and jointly by direction of the court."

478 XVIII. The Court erred in that portion of its charge to the jury, (testimony, pages 238-239) as follows:

"The next question for you to determine is the presence of essential elements. One of them is, for instance, that the United States is at war. Secondly, that what was done was an attempt to cause insubordination, or what was done did amount to obstructing

enlistment, and the question may arise in your mind how you are to determine that. Whenever you are asked as a jury to pass upon anything which is a matter within common knowledge, common information, things which people ordinarily know, which are generally and practically known, when you are passing upon such questions, you have the right to call upon your general knowledge and information. You must determine, for instance, the question whether or not we are at war, because unless we are, this indictment goes for nothing. You may determine that from your general information, this something of which, in the phrase of the law, the law takes judicial notice. So also when you come to determine the question of whether or not there was an attempt to cause insubordination, you take, of course, all the evidence into the case, and you have a right to direct your minds, as naturally you would, to the character of these publications themselves, these pamphlets and these articles, and determine from them, assisted by all the other evidence in the case, whether or not they do reach the dignity of the charge of attempting to cause insubordination, or amount to an obstruction of enlistment.

"That is all I care to say as to the particulars of the evidence and the charge against these defendants, because, as I have said, it would take an undue amount of your time for me adequately to discuss it, and I would not care to give you any partial discussion of the evidence. You have heard it. You can weigh it. You can appraise it at its true value."

As objected to (testimony, page 254) as follows:

"Mr. Nelson: One other thought, your Honor. I do not wish to discuss it, unless your Honor wants me to. But I would ask for an exception to that part of your Honor's charge in which you say that the jury may call on its general knowledge, and then they could determine, for instance, the question of whether or not we are now at war from their general information, something, in the phrase of the law, that the law takes judicial notice of, and then going down further you said that they could, through the general character of the publications, and from their general knowledge, determine what these publications were intended for.

"(Exception noted for the defendants as requested, individually and jointly, by direction of the court.)"

479 XIX. The Court erred in refusing to affirm the following points of charge, requested by the defendant (testimony, page 252), as follows:

"Defendants' points which were refused by the Court without being read, are as follows:

"1. Under all the evidence, your verdict should be 'not guilty'."

"3. Statements alleged to have been made by the accused to officials or agents of the Government after arrest, unless prefaced by a warning that answers thereto would be used against the accused,

must not be considered by the jury in determining the guilt of the accused.'

"(Exception noted for the defendants to the refusal of points 1 and 3, which were not read, jointly and individually, by direction of the court.)

XX. The Court erred in qualifying certain points for charge submitted by the defendants by adding comments thereto (testimony, page 245) as follows:

"Point number two is:

"If the jury can only determine guilt on the part of the accused from evidence based on books, papers, printing or writing taken from the accused by Government officials or agents, then the verdict should be not guilty."

"Assuming this means that you should be instructed to disregard the value as evidence of these books and papers because of the means through and from which they happen to be before you, I negative that point. These are all in the case, and are to be considered by you."

"If the point means, however, that their guilt would appear if you considered only that evidence, and nothing else, but would not appear if you considered some other evidence in the case, if it means that, then I affirm it, or, in other words, my instructions are to you that you are to consider and give due weight to all the evidence, books, and papers, included."

As objected to (testimony, pages 251-252) as follows:

"Mr. Nelson: Will your Honor grant me an exception to those points for charge which you refused to affirm?"

"The Court: Yes. I will give you an exception to the points disaffirmed, and I will give you an exception to the points qualified, and an exception to all the comments made upon the points, other than a clean affirmance."

480 "(Exception noted for the defendants, as above indicated, jointly and individually, by direction of the court.)"

XXI. The Court erred in qualifying certain points for charge submitted by the defendants by adding comments thereto (testimony, page- 246-247) as follows:

"5. Under the first Amendment to the Constitution freedom of speech and of the press cannot be abridged, and people can only be held responsible for any injury resulting from their utterances."

"I cannot affirm that just in the words in which it is written. 'Freedom of the press' and 'freedom of speech' are rights not only which exist, but they are rights which have the sanction of the supreme law the sanction of the Constitution of the United States, and for that matter of the Constitution or Bill of rights of every State in the Union, and indeed wherever the idea and thoughts of law as understood by English speaking people exist, every man has

the right of free speech. Certainly each and every one of us would have a feeling of sadness if there was a possibility of it being taken away from us. We have the right of free speech, but we have no right to violate the law, or, as it is commonly expressed, while we have the right and privilege of free speech, we are responsible for the abuse of it, and if in the assertion, mistaken or otherwise, of what we regard as the right of free speech, we violate the law, we are answerable for the violation, and our right of free speech will not save us. A number of illustrations have been given to you. A man has the right to write what he believes, but if what he writes is a libel upon some one, if it blackens the reputation of one who is living or blackens the reputation of the dead, the man who puts forth that libel has the right of free speech, including the right to write, but if he has been guilty of libel, he may be punished for it, and so with any other crime of which he may be guilty."

As objected to (testimony, pages 251-252) as follows:

"Mr. Nelson: Will your Honor grant me an exception to those points for charge which you refused to affirm?"

"The Court: Yes. I will give you an exception to the points disaffirmed, and I will give you an exception to the points qualified, and an exception to all the comments made upon the points, other than a clean affirmance.

"(Exception noted for the defendants, as above indicated, jointly and individually, by direction of the court.)"

XXII. The Court erred in qualifying certain points for charge submitted by the defendants by adding comments thereto (testimony, pages 247-248) as follows:

481 "6. Unless the jury finds from the evidence that the defendants wrote the newspaper articles complained of or were responsible as editors of Kova for their publication, they cannot be found guilty as to this charge."

"I affirm that with this qualification. You will bear in mind that the charge is not that they did these things; the charge is a conspiracy to do them. Every man who had any part or share, who participated in the doing of an act, is responsible for the act, and the act really is the publication and not the writing of the article. For instance, if a man publishes an article, or has a part in its publication, he may have had no part or share in the writing of the article, he may even have had no knowledge that it had been written until after it was done, and knew absolutely nothing about it, but if the act which is complained of is the publication, and he had a part or share in it, then he is answerable."

As objected to (testimony, pages 251-252) as follows:

"Mr. Nelson: Will your Honor grant me an exception to those points for charge which you refused to affirm?"

"The Court: Yes. I will give you an exception to the points disaffirmed, and I will give you an exception to the points qualified, and

an exception to all the comments made upon the points, other than a clean affirmance.

"(Exception noted for the defendants, as above indicated, jointly and individually, by direction of the court.)"

XXIII. The Court erred in qualifying certain points for charge submitted by the defendants by adding comments thereto (testimony, pages 248-249) as follows:

"8. If the jury finds from the evidence that the editors of Kova were Vidikas and Stalioraitis, the defendants Stilson and Sukys cannot be held responsible for the acts of these editors in publishing the various news articles and editorials in Kova."

"I will have to qualify that point, by again reminding you that the charge here is one of conspiracy, that they conspired together with these persons named and with another person who is also named in the indictment, and if the conspiracy existed, and any one of these conspirators, any one who was among those who were acting together, committed any one of these overt acts, then the charge of conspiracy is made out."

As objected to (testimony, pages 251-252) as follows:

"Mr. Nelson: Will your Honor grant me an exception to those points for charge which you refused to affirm?"

482 "The Court: Yes. I will give you an exception to the points disaffirmed, and I will give you an exception to the points qualified, and an exception to all the comments made upon the points, other than a clean affirmance.

"(Exception noted for the defendants, as above indicated, jointly and individually, by direction of the court.)"

XXIV. The Court erred in refusing to grant a new trial because the indictment under which the defendant was tried was bad for duplicity, all as set forth in the fifth heading of the Trial Judge's opinion dismissing the motion for a new trial (filed November 26, 1918), pages 6-9.

XXV. The Court erred in not directing the jury to find a verdict of not guilty in favor of the defendant on the ground that Title I, Section 3 of the Act of June 15, 1917, C. 30, was unconstitutional, on the ground of conflict with the First Amendment to the Constitution, guaranteeing the right of free speech.

Wherefore the defendant prays that the judgment of the District Court may be reversed.

HENRY J. GIBBONS,
HENRY JOHN NELSON,
Attorneys for Defendant.

[Endorsed:] U. S. Dist. Ct., East. Dist. Pa. #114, June 22, 1918.

483 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1918.

No. 114.

UNITED STATES OF AMERICA

VS.

JOSEPH V. STILSON, JOSEPH SUKYS, et al.

Assignments of Error of Joseph Sukys.

(Filed Dec. 6, 1918.)

The defendant in this action, Joseph Sukys, in connection with his Petition for a Writ of Error, makes the following Assignments of Error, which he avers occurred upon the trial of the cause, to wit:

I. The Court erred in refusing to grant a new trial to the defendant.

II. The Court erred in refusing to sustain a motion in arrest of judgment.

III. The Court erred in refusing to grant a severance, so that the defendant, Sukys, might be tried separately from the defendant, Stilson (testimony, pages 2 and 3), as follows:

"Mr. Nelson: May it please the Court, now that the defendants have been arraigned, and plead 'Not guilty,' and are at the bar of the Court, I move your Honor to grant them a severance in this trial.

"Mr. Roberts: If your Honor pleases, this is an indictment for conspiracy, and they, too, are indicted as conspirators together with others, and I think this has not even the merit of being an application as to a bill containing separate counts. There are no separate counts here whatever.

"The Court: Mr. Nelson, the almost unvarying practice is not to grant a severance. If there is any special reason for it——

"Mr. Nelson: I know, your Honor, it is within your discretion, and it is not because they are conspirators that I ask this. That would be rather against me, but——

"Mr. Roberts: I say it is an indictment for conspiracy. I have not said that they are conspirators yet.

484 "Mr. Nelson: Because it is an indictment for conspiracy—that is not my reason. It is because I desire to examine the jury of the panel on its voir dire, and I know that a certain number of challenges are allowed, and I would like to exercise these challenges on behalf of each individual defendant, although I know that the practice and the decisions of the Court are against it, not to allow a severance on that account, still, as I feel that it is a violation of the Constitutional rights of these defendants, I ask for the severance.

"The Court: Have you sufficiently stated your ground?

"Mr. Nelson: Yes. That is my ground.

"The Court: The motion is disallowed, and an exception noted for

the defendants, individually and jointly, and the notes may show, where an exception is allowed jointly, it is understood to be allowed to the joint and individual benefit of both defendants, unless otherwise stated at the time.

"(Exception noted for the defendants, individually and jointly, by direction of the Court.)"

IV. The Court erred in not sustaining challenge for cause during the selection of the jury of juror No. 55, Jacob H. Lamor (testimony, pages 322-325), as follows:

"No. 55. JACOB H. LAMOR, sworn on his voir dire.

"By Mr. Roberts:

"Q. This is a prosecution under the espionage act of the United States against these men for a conspiracy to violate the act, and to say things which were calculated to hinder the United States in raising its army, to hinder the recruiting and enlistment service of the United States, and to aid the enemies of the United States. These men are said to be members of a Socialist organization, and to have Lithuanian blood or to be of Lithuanian descent. Have you ever heard of the case?

"A. I have not.

"Q. If you were sworn as a juror in this case do you feel, as a good American, you could try the case solely on the evidence and the facts and the law as produced in this case?

"A. I do.

"Q. Would the fact that these men are Lithuanians, if they are such, or Socialists, cause you to acquit them if you thought them guilty, or cause you to convict them if you thought them innocent, on the evidence?

"A. No, sir.

"Cross-examination.

"By Mr. Nelson:

"Q. Whom do you work for?

485 "A. Kirk, Foster and Company.

"Q. What business are they in?

"A. Wholesale grocers.

"Q. And you have no prejudice against Socialists as such, so that it would interfere with your judgment in rendering a verdict, according to the law and the evidence?

"A. I have not.

"Q. When I asked you if you had any prejudice against Socialists, what did you take my question to mean?

"A. I take it to mean that if I am prejudiced against Socialism generally.

"Q. Yes, but what do you understand when I ask you about Socialism?

"A. Why, when you ask about Socialism I take it that——

"Q. What is Socialism, according to your opinion?

"A. Well, a person whose mind is biased along certain lines.

"Q. And along what lines, for instance?

"A. Well, for instance, they have an idea—a person who has the idea that they have certain rights and certain things that belong to them. They feel they should have them whether they are justified in having them or not.

"Mr. Nelson: The juror is challenged by the defendants for cause.

"Mr. Roberts: I object to the challenge for cause.

"Mr. Nelson: The answer of the witness, your Honor, shows that in his opinion Socialists are people who do things which are not justifiable.

"Mr. Roberts: That was not what he said.

"Mr. Nelson: He shows by his answer that they are biased in certain things, and when I asked him further he said——

"The Court: I think we understand the witness. We are all biased in favor of our own predilections, no matter what our political convictions are.

"Mr. Roberts: I suppose a Democrat would say a Republican was biased, and a Republican might say a Democrat was biased.

"The Court: To be perfectly frank, I think each one of them would own up to being biased.

"Mr. Nelson: Further, your Honor, he said Socialists were people who wanted things, whether they were justified in having them or not.

486 "The Court: That does not mean any more than this, I assume, that they think, from their point of view, they are right, and that they insist upon having what they want, notwithstanding other people do not think as they do.

"Mr. Nelson: Further, the witness shows by his answer that he does not know what Socialism is.

"Mr. Roberts: If that is to disqualify jurors, if they cannot define Socialism, then it disqualifies everybody in the court room, probably, because I would not want to be stood up and asked to give a correct definition of Socialism.

"The Court: In point of fact, Mr. Nelson, with any body of men, who entertain a common belief upon any subject, one of the things as to which they always have to contend is the difficulty in getting other people to have the same conception of their aims and motives and purposes and beliefs and doctrines as they have themselves. I do not think there is any occasion to have any discussion about it. The challenge is for cause?

"Mr. Nelson: For cause, yes sir.

"The Court: The challenge is denied, and exception allowed to the defendants.

"(Exception noted for the defendants, individually and jointly, by direction of the Court.)"

V. The Court erred in refusing to permit the peremptory challenge

of juror No. 55, Jacob H. Lamor, on behalf of the defendant Stilson, and in ruling as follows (testimony, page 325), as follows:

"Mr. Nelson: Then, sir, I challenge on behalf of the defendant Stilson individually. The juror is satisfactory to the defendant Sukys.

"The Court: Upon that I rule that a peremptory challenge may be allowed for the defendants, but it is a challenge on behalf of the defendants as if there was but one party defendant. I will allow the challenge, but accompany it with the ruling, that it is for the benefit of both defendants, and counts as against both defendants, and, so far as the ruling is a qualification of your right of peremptory challenge, I give you an exception.

"(Exception noted for the defendants, individually and jointly, by direction of the Court.)"

VI. The Court erred in making the following ruling regarding all peremptory challenges (testimony, pages 325 and 326) as follows:

487 "Mr. Nelson: Will your honor instruct the court stenographer, to save time, that the same ruling may apply in case I should make a similar objection or challenge?"

"The Court: Yes, if at any time another peremptory challenge should be made upon behalf of either of the defendants, individually, it is understood that it is subject to the same ruling and allowance of the same exception."

VII. The Court erred in not directing a verdict for defendant to be entered upon motion at the conclusion of the government's testimony (testimony, page 111) as follows:

"Mr. Nelson: If your Honor please, as a matter of form I am going to make a motion that your Honor dismiss the charges against both the defendants and take the case from the Jury, on the ground, as I have already indicated in objections I have made, that the Government has failed to connect either one of these defendants with either the typewritten circular, mimeographed circular, or with the articles in Kova. I anticipate from what your Honor has already ruled how your Honor will decide the motion, but, as I say, I make that motion now as a pure formality, so as to have your Honor's ruling.

"Motion denied. Exception noted for defendants by direction of the Court.

VIII. The Court erred in the admission of evidence by the plaintiff in the testimony given by the witness, Roy C. McHenry, in substance setting forth his conversation with the defendant, Joseph V. Stilson, on December 7, 1917, in the absence of the witness testifying that he had cautioned this defendant that, if he made any statement, he made it with the knowledge that it might be used against him (testimony, pages 31-34) as follows:

"(Mr. Roberts:)

"Q. Did you show the paper that I have just shown you, Government Exhibit No. 23, to any one?

"A. Yes, sir, to Mr. Stilson.

"Q. What did you say to him about it?

"A. I said, 'Mr. Stilson, did you get this paper out that is signed with your name,' and he looked at the last sheet, the third sheet, and he said, 'Yes, I got that out,' and I said, 'Have you any more of them?' And he said, 'No, they are all gone.' And I looked
488 and I found four or five more copies of the same thing, the same kind of paper.

"Q. You mean down there at the office of Kova you found some?

"A. Yes, right then. I looked around and I found them and I said, 'There are some after all.'

"Q. You had with you at that time a United States Marshal who had a warrant of Search and Seizure, had you not?

"A. Yes, sir.

"Q. That pamphlet there you say is signed. Is it signed in handwriting or typewriting?

"A. It is signed in typewriting.

"Q. It is signed 'J. V. Stilson, S. S. S. Buitais.' Do you know enough about Lithuanian to know what that is?

"A. Yes, sir that is secretary translator.

"Q. Did you ask Mr. Stilson anything about where or how that was made?

"Mr. Nelson: I haven't made any objection so far, but I think now that I ought to object until the witness has been asked whether he had notified the defendant that anything he said might be used against him.

"By Mr. Roberts:

"Q. Just one minute and I will cover that. Had Mr. Stilson before that time, been served with any warrant of arrest?

"A. He had. He was under arrest. Deputy Marshal Kelly had taken him into custody.

"Q. He understood that he was under arrest? Had been so informed?

"A. He understood. We didn't tell him anything that he said would be used against him, but all——

"Mr. Roberts: I call your Honor's attention to the fact that this paper is no paper involved in the indictment at all.

"By Mr. Roberts:

"Q. Did you ask him where that paper had been made?

"A. I said, 'Did you make that paper up?' And he said, 'Yes, I made it on the typewriter.'

"Mr. Nelson: I object.

"The Witness: Then I printed it with the mimeograph.

489 "Mr. Nelson: I object to the testimony that Mr. McHenry is giving now as to what this defendant Stilson or any other defendant said while under arrest, as it is not admissible in view of the fact that Mr. McHenry stated that he had not warned these defendants that anything they might say would be used against them.

"The Court: I think we ought to have it developed whether the statement was made voluntarily or whether it was elicited and, if so, under what circumstances it was elicited.

"Mr. Roberts: Well, I understand you to say, and if I am wrong, correct me, that you showed them this grey paper here.

"The Witness: Yes, sir.

"By Mr. Roberts:

"Q. I understand further that you asked him if he made it?

"A. Yes, sir.

"Q. Now then I want to know if he made a connected reply to that and whether what you are going to testify to now was all one reply or whether further questions were asked him and he made further reply? Do you understand my question?

"A. He said, 'Yes——'

"Q. I don't want what he said now.

"A. He answered in one response.

"Q. Which is what you are going to tell us now?

"A. All, in answer to that question, yes.

"Mr. Roberts: Now I press the question as to what he said

"Mr. Nelson: And I press the objection for the reasons already stated.

"Objection overruled. Exception noted for the defendants individually and jointly by direction of the court."

IX. The Court erred in the admission of evidence by the plaintiff in the testimony given by the witness, Horace H. Bolling, in substance as to the conversation had between the witness Roy C. McHenry, and the defendant, Joseph V. Stilson, on December 7, 1917, regarding the witness saying anything that would tend to in-
490 criminate this defendant out of his own mouth, in view of the fact that there was duress after the service of the warrant and that the witness had said nothing to the defendant with regard to using what he might say against him subsequently (testimony, pages 53-55) as follows:

"(Mr. Roberts:)

"Q. Just tell us what the conversation was, as nearly as you can remember it.

"Mr. Nelson: So that I understand, the objection I made to the previous question similar to this applies to this witness now?

"The Court: You may now, if you choose, develop any facts, which, in your judgment, would have a bearing upon the question preliminary to the question being asked him. The District Attor-

ney has developed the fact that before the making of the statement he is now about to interrogate the witness on, nothing was said to him, justifying the inference that it was a voluntary statement. If you wish to develop any other facts, you may cross examine the witness on that point.

"Mr. Nelson: The District Attorney has already developed the fact that this was after the warrant had been served.

"Mr. Roberts: I have developed that from the other witness, Mr. Bolling did not happen to remember that fact, but I am perfectly willing to stand on that. That was proved affirmatively.

"Mr. Nelson: My objection goes only to the fact, that after the serving of a warrant, there is duress, and I think I can find cases that go that far.

"The Court: Yes, you can find cases on both sides of that proposition.

"Mr. Nelson: I object on the ground that there was duress because of the service of this warrant.

"The Court: You will find cases that go farther than that. You can find a line of cases that go to the extent of saying that, *prima facie*, there is coercion. You wish to renew the objection?

"Mr. Nelson: I renew the objection to this witness saying anything that would tend to incriminate these defendants out of their own mouths in view of the fact that, first, there was duress after the service of the warrant, and, second, due to the fact that the witness has said that nothing was said to these defendants with regard to using their words against them subsequently.

"The Court: The objection is overruled and an exception noted for the defendants with leave, after the testimony has been given, if you so desire, to further object to this through and by a motion to strike out.

491 "(Objection overruled.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

X. The Court erred in the admission in evidence of government's exhibit No. 27, which was a yellow sheet testified to have been made from the same stencil as government exhibit No. 1, known as the "Neikime leaflet," headed, as translated into English, "Let Us Not Go To The Army," (testimony, pages 266-268), with Lithuanian matter endorsed thereon, translated substantially, as follows: "This was distributed at our place one night. Fraternally, J. A. Tusen, 18 Amies Street," (testimony, pages 102 and 103) as follows:

"Mr. Nelson: I object to the introduction of this exhibit, No. 27, on the ground, first that it is a lefthanded way of making a defendant testify against himself, looking at it from the very best point of view of the Government, and secondly I object to it because the Government has in no way connected either one of these defendants with that piece of paper. It might just as well have been found on the street or in another house. The testimony shows that it was found in the editors' room in a pigeonhole in the back of this building at the other end as far physically as it could be away from where Stilson

and Sukys were, and thirdly I object to the introduction of this piece of paper as against these defendants because it shows on its face that it is a paper which was sent to somebody, presumably from the Government's evidence, to one of these editors, Vidikas or Stalioraitis.

"The Court: I will overrule the objection and give the defendants an exception. I will overrule it on the first ground. I see no reason to give the reasons for the ruling. I will overrule it on the second ground because the United States may prove the publication. The question of whether or not the defendants have been connected with it by the evidence is a matter for the determination of the jury. I will overrule it on the third ground for reasons which I do not think it is necessary to state on the record.

"(Objection overruled.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

492 XI. The Court erred in the admission in evidence of government's exhibits Nos. 3, 5, 7, 9, 11, 13, 15, 17, 19 and 21, being, in substance, articles mentioned in the indictment, the offer, however, including the entire issue of the paper in which the article appeared (testimony, pages 103-105) as follows:—

"Mr. Roberts: I also offer in evidence Government's Exhibits Nos. 3, 5, 7, 9, 11, 13, 15, 17, 19 and 21, being the articles mentioned in the indictment, making the offer however, of the entire paper in which the article appears, and calling attention to the articles in each case. Unless Mr. Nelson desires it, for the purpose of certainty, I will not take the court's time by mentioning the date of each of these papers, as they are all bound in a bound folder running serially and consecutively, and the dates are charged in the indictment, so that he will not be at a disadvantage in knowing which papers are offered.

"Mr. Nelson: I object to that, sir. First on the same ground as I made the objection just immediately previously, that this is a lefthanded way on the part of the Government to cause a defendant to testify against himself, namely, by means of a search warrant, seizing everything that they can find in the place, and subsequently using it against the defendants, or endeavoring to use it against the defendants. Secondly, I object to it, because, in my opinion, sir, the Government has not connected either one of these defendants with Kova. Their own witness, Rudaitis, who was employed there, has testified, and they are bound by his testimony, that Stilson was secretary of the Federation, that Sukys was manager, he said, of the Federation, and he did say on one occasion of Kova—he was not clear about that: He testified that neither one of these men had the right to hire or discharge either one of the editors, that they were entirely separate and distinct from the editors, that they had nothing to do with the editorial or news policy of the paper Kova, and this same witness Rudaitis testified further that this Federation, by various processes, either elected or appointed these different individuals, and that these different individuals were individually re-

sponsible to the branch of the Federation which either elected or appointed them. To be perfectly fair with the Government, on this point of my objection, the only evidence I can see to connect up these defendants with Kova is the document which was put in evidence here and which was not objected to, from the Post Office, which sets forth the names of the officers of Kova. That is the only thing that the Government has shown really connecting these two defendants.

"The Court: Let me inquire, Mr. Nelson. The copies, which were the production of these machines, as to which we have evidence,—were those articles reproduced in the paper, or were they pamphlets merely?

"Mr. Roberts: Do you mean Government's Exhibit No. 1, which is the anti-recruiting thing? The mimeograph thing?

493 "The Court: I do not know what it is.

"Mr. Roberts: We complain of the pamphlet.

"The Court: There is evidence here as to certain published manuscripts.

"Mr. Roberts: That is the only one, sir, that we complain of, and that is the first overt act alleged in the indictment.

"The Court: There were two. One I understand is innocuous, and the other is complained of.

"Mr. Roberts: Yes.

"The Court: What I want to know is whether those articles, or either of them—I assume you will ask the jury to find they are the product of these particular machines—whether or not they appeared in the newspapers.

"Mr. Roberts: No, sir, they did not appear in the newspapers.

"The Court: I understand they did not.

"Mr. Nelson: That is the basis of my objection, sir.

"The Court: I will overrule it upon the first ground. I will overrule it also upon the second ground. The record may show that the question of the connection of the defendants, or either of them, with the paper is a question to be determined by the jury. It is not necessary that there be evidence of authorship if the gravamen of the offense, so far as the paper is concerned, is in the publication.

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

XII. The Court erred in the admission in evidence of government's exhibits Nos. 4 (testimony, pages 269-272), 6 (testimony, pages 272-274), 8 (testimony, pages 274-276), 10 (testimony, pages 276-279), 12 (testimony, pages 279-286), 14 (testimony, pages 287 and 288), 16 (testimony, pages 288-290), 18 (testimony, pages 291 and 292), 20 (testimony, page 293) and 22 (testimony, pages 294 and 295), having been sworn to or testified to be translations of the exhibits previously offered in evidence, Nos. 3, 5, 7, 9, 11, 13, 15, 17, 19 and 21 (testimony, page 106) as follows:

494 "Mr. Roberts: I offer in evidence Government's Exhibits Nos. 4, 6, 8, 10, 12, 14, 16, 18, 20 and 22, being sworn to or testified to to be translations of the Exhibits last offered in evidence.

"Mr. Nelson: I object to those translations being put in evidence, sir, because they are translations of certain articles appearing in certain papers which I have already objected to.

"(Objection overruled.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

XIII. The Court erred in the admission in evidence of Exhibit No. 25, being one of the issues of Kova, June 1, 1917, calling attention to articles signed by J. V. Stilson (testimony, pages 106 and 107) as follows:

"Mr. Roberts: I also offer in evidence one of the issues of Kova, of June 1, 1917, which has been identified here, but has not yet been offered separately, calling attention to two articles signed by J. V. Stilson, which articles are not copied as overt acts, or charged as such, in the indictment, which articles appear on page two of said issue, being signed by J. V. Stilson, L. S. F. Seki, Vert."

"The Court: Does that mean the official designation?"

"Mr. Roberts: Yes. That means the Lithuanian Socialist Federation, Secretary Translator.

"I offer these articles in evidence to show motive, intent and purpose and connection with the purposes of this Federation, and to be taken in connection with an offer immediately to follow, of this entire file of the paper, to show two things, first, that this paper, as has been testified to orally, and by its own admission, was the official organ of this association of which Stilson has been testified to have been the secretary.

"Mr. Nelson: I object to Exhibit No. 25, sir—I object to the introduction of it in evidence, because it did not appear in the indictment, and the defendants had no knowledge that it might be used in evidence, and, therefore, they are more or less unprepared to meet it.

"(Objection overruled.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

495 XIV. The Court erred in the admission in evidence of government exhibit No. 26 (testimony, pages 302-309 inclusive), being a translation of Exhibit No. 25 (testimony, page 107) as follows:

"Mr. Roberts: I also offer in evidence Government's Exhibit No. 25, which was yesterday identified by Mr. Slikas as a correct translation of the article known as Government's Exhibit No. 25.

"(Objected to.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

XV. The Court erred in the admission in evidence of file of newspaper "Kova," starting with issue of May 25th and extending to issue of October 19, 1907, not being intended to cover the contents of the issues except for the purpose of showing the following taken from the first page of the heading (testimony, pages 107 and 108) as follows:

"Mr. Roberts: I also offer in evidence the file which has been identified as the file of the newspaper Kova, starting with the issue of May 25, and running through to the date of the latest article which is offered as an Exhibit, being October 19, 1907, restricting and limiting that offer, however, so as not to put the contents of the issues in evidence, unless the defendants desire to so do, for any purpose, except for the purpose of showing the following, taken from the first page, at the heading:

"The Lithuanian weekly 'Kova,' published every Friday by the Lithuanian Federation Socialist Party, subscription, in all parts of the world, \$2.00. Advertising rates on application. All communications should be addressed to K. Vidikas, Editor. J. Sukys, Manager."

"Then again, on a new line:

"'Kova, 229 North 6th Street, Philadelphia, Pa.'"

"My offer, except, as I have said, for any use the defendants may care to put the issue to, being limited to that only, and no other matter, in these issues, except the issue in which I have identified the articles, and had them translated, being offered in evidence as substantive matter in this case. I have limited my offer, and I tried to make it clear. I do not know whether I have or not."

496 "Mr. Nelson: I object to the introduction of this for the reasons already stated."

"(Objection overruled.)"

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

XVI. The Court erred in refusing to admit evidence on behalf of the defendant under cross-examination of the government witness, Roy C. McHenry, in substance, regarding the arrest of the defendant, Joseph Sukys (testimony, pages 49-51) as follows:

"By Mr. Nelson:

"Q. I am going to ask you a question, but do not answer it until Mr. Roberts has a chance to object, if he does want to object."

"A. All right."

"Q. You say Sukys was not arrested at this time. Is that right?"

"A. He was not."

"Q. Is it not true that he subsequently was arrested on a charge similar to this, and the Grand Jury did not find a true bill against him?"

"Mr. Roberts: I object to that. It is highly improper."

"The Court: What help could that be to us? I do not catch its

relevancy. It is not cross examination. The question as to his arrest merely grew out of the misapprehension that you and I were under as to the purpose of the District Attorney in his interrogation of this witness. Your objection assumed that he was about to use something in the nature of a confession, and I suggested the question, in fact I think I asked it myself, as bearing upon that. It appeared that there was no such purpose in the interrogation. So the objection was withdrawn, and everything connected with it fell from under it. Now, of what value is it to know——

"Mr. Nelson: This is another thing. The witness was asked, or as a result of a question the witness said that Sukys was not arrested at this time, and I want to ascertain why he was not arrested.

"The Witness: I can tell you that.

"Mr. Roberts: I do not think he can go into that. I do not think we are interested in that. The purpose of the question is an improper one.

497 "The Court: The query is, in what way will it help us to determine this issue. If it is of the slightest help to us, let us have it, but if it is not of any value to us, isn't it better that our minds should not be distracted by something that does not help us any, to determine this issue?

"Mr. Nelson: Except in this, I want to do all I can for both of my clients.

"The Court: Certainly, and if you can show that it has an effect helpful to them, that is the strongest kind of relevancy and pertinency. That is what the jury should know. But if it does not have any bearing, why go into it? What bearing does it have?

"Mr. Nelson: My thought is this. This is what bearing it has, that if Sukys was not arrested at this time, then apparently, in the eyes of the authorities, nothing had been discovered at that time which would tend to incriminate Sukys, and then it would put the burden on the Government, if it had anything, to show something that had been discovered subsequently. Whether it would have or not I do not know.

"The Court: I do not see that there would be anything that would compel that inference. We have the fact—it is now in the case—that at that time he had not been arrested. That being in the case as a fact, the jury can draw any inference that seems to their minds to be justified. Now you are asking him whether or not he was arrested at a subsequent time, and what the result of the arrest was. I do not see that it has any bearing. I do not think it is germane as cross-examination, to begin with, and I do not think it has any relevancy. So for the present I will sustain the objection and give you an exception. If there is any reason, indicating its relevancy, which occurs to you hereafter, I will permit you to renew the question.

"(Objection sustained.)

"(Exception noted for the defendants, individually and jointly, by direction of the court.)"

XVII. The Court erred in refusing to strike out all testimony of the witness, Roy C. McHenry, regarding conversation with the defendant, Joseph V. Stilson, in the absence of evidence as to whether the statement was made voluntarily or whether after due warning to the defendant that anything he might say would be used against him (testimony, pages 30-34) as follows:

"By Mr. Roberts:

"Q. You are a special agent of the Department of Justice of the United States, are you not?

498 "A. Yes, sir.

"Q. And also a special assistant of the United States District Attorney of the Middle District?

"A. Yes, sir.

"Q. And in your official capacity as such, did Government Exhibit No. 1 which has been here identified by this young man, come to your attention?

"A. Yes, sir.

"Q. About what time?

"A. About the 26th day of August, 1917.

"Q. Did you get it into your possession?

"A. Yes, sir.

"Q. Who has had it in his possession ever since then to the day of this trial?

"A. I have.

"Q. Now Mr. McHenry, as a result of some investigation that you made about the matter, did you come to Philadelphia?

"A. Yes, sir.

"Q. I now show you government exhibit No. 23 which appears to be a Lithuanian pamphlet mimeographed from a typewriter. Did you find that somewhere?

"A. Yes, sir.

"Q. When you came to Philadelphia and made an investigation, did you go to the offices of Kova at any time?

"A. Yes, sir.

"Q. If so, can you give me the date?

"A. December 7, 1917.

"Q. Did you have the paper known as Government Exhibit No. 23 which you now have in your hand with you at that time?

"A. I did.

"Q. Who did you meet at the office of Kova?

"A. I met Mr. Stilson, the defendant there, Mr. Sukys, Mr. Stalioraitis, Mr. Rudaitis and another man who was working in the office and there were two or three other bystanders who happened to be in there.

"Q. Did you show the paper that I have just shown you, Government Exhibit No. 23, to any one?

499 "A. Yes, sir; to Mr. Stilson.

"Q. What did you say to him about it?

"A. I said, 'Mr. Stilson, did you get this paper out that is signed

with your name,' and he looked at the last sheet, the third sheet, and he said 'Yes, I got that out,' and I said 'Have you any more of them?' And he said 'No, they are all gone.' And I looked and I found four or five more copies of the same thing, the same kind of paper.

"Q. You mean down there at the office of Kova you found some?

"A. Yes, right then. I looked around and I found them and I said, 'There are some after all.'

"Q. You had with you at that time a United States Marshal who had a warrant of Search and Seizure, had you not?

"A. Yes, sir.

"Q. That pamphlet there you say is signed. Is it signed in handwriting or typewriting?

"A. It is signed in typewriting.

"Q. It is signed 'J. V. Stilson, S. S. S. Buitais.' Do you know enough about Lithuanian to know what that is?

"A. Yes, sir that is secretary translator.

"Q. Did you ask Mr. Stilson anything about where or how that was made?

"Mr. Nelson: I haven't made any objection so far, but I think now that I ought to object until the witness has been asked whether he had notified the defendant that anything he said might be used against him.

"By Mr. Roberts:

"Q. Just one minute and I will cover that. Had Mr. Stilson before that time, been served with any warrant of arrest?

"A. He had. He was under arrest. Deputy Marshal Kelly had taken him into custody.

"Q. He understood that he was under arrest? Had been so informed?

"A. He understood. We didn't tell him anything that he said would be used against him, but all——

"Mr. Roberts: I call your Honor's attention to the fact that this paper is no paper involved in the indictment at all.

"By Mr. Roberts:

"Q. Did you ask him where that paper had been made?

500 "A. I said, 'Did you make that paper up?' And he said, 'Yes, I made it on the typewriter.'

"Mr. Nelson: I object.

"The Witness: Then I printed it with the mimeograph.

"Mr. Nelson: I object to the testimony that Mr. McHenry is giving now as to what this defendant Stilson or any other defendant said while under arrest, as it is not admissible in view of the fact that Mr. McHenry stated that he had not warned these defendants that anything they might say would be used against them.

"The Court: I think we ought to have it developed whether the

statement was made voluntarily or whether it was elicited, and, if so, under what circumstances it was elicited.

"Mr. Roberts: Well, I understood you to say, and if I am wrong, correct me, that you showed them this grey paper here.

"The Witness: Yes, sir.

"By Mr. Roberts:

"Q. I understand further that you asked him if he made it?

"A. Yes, sir.

"Q. Now then I want to know if he made a connected reply to that and whether what you are going to testify to now was all one reply or whether further questions were asked him and he made further reply? Do you understand my question?

"A. He said, 'Yes,——'

"Q. I don't want what he said now.

"A. He answered in one response.

"Q. Which is what you are going to tell us now?

"A. All, in answer to that question, yes.

"Mr. Roberts: Now I press the question as to what he said.

"Mr. Nelson: And I press the objection for the reasons already stated.

"Objection overruled. Exception noted for the defendants individually and jointly by direction of the court.

"Mr. Nelson: I further move that all of the testimony that was given in this line of examination prior to my objection be stricken out.

"Objection denied. Exception noted for the defendants individually and jointly by direction of the court."

501 XVIII. The Court erred in that portion of its charge to the jury (testimony, pages 238-239) as follows:

"The next question for you to determine is the presence of essential elements. One of them is, for instance, that the United States is at war. Secondly, that what was done was an attempt to cause insubordination or what was done did amount to obstructing enlistment, and the question may arise in your mind how you are to determine that. Whenever you are asked as a jury to pass upon anything which is a matter within common knowledge, common information, things which people ordinarily know, which are generally and practically known, when you are passing upon such questions, you have the right to call upon your general knowledge and information. You must determine, for instance, the question whether or not we are at war, because unless we are, this indictment goes for nothing. You may determine that from your general information, this something of which, in the phrase of the law, the law takes judicial notice. So also when you come to determine the question of whether or not there

was an attempt to cause insubordination, you take, of course, all the evidence into the case, and you have a right to direct your minds, as naturally you would, to the character of these publications themselves, these pamphlets and these articles, and determine from them, assisted by all the other evidence in the case, whether or not they do reach the dignity of the charge of attempting to cause insubordination, or amount to an obstruction of enlistment.

"That is all I care to say as to the particulars of the evidence and the charge against these defendants, because, as I have said, it would take an undue amount of your time for me adequately to discuss it, and I would not care to give you any partial discussion of the evidence. You have heard it. You can weigh it. You can appraise it at its true value."

As objected to (testimony, page 254) as follows:

"Mr. Nelson: One other thought, your Honor. I do not wish to discuss it, unless your Honor wants me to. But I would ask for an exception to that part of your Honor's charge in which you say that the jury may call on its general knowledge, and then they could determine, for instance, the question of whether or not we are now at war from their general information, something, in the phrase of the law, that the law takes judicial notice of, and then going down further you said that they could, through the general character of the publications, and from their general knowledge, determine what these publications were intended for.

"(Exception noted for the defendants as requested, individually and jointly, by direction of the court.)"

502 XIX. The Court erred in refusing to affirm the following points of charge, requested by the defendant (testimony, page 252) as follows:

"Defendants' points which were refused by the Court without being read, are as follows:

"1. Under all the evidence, your verdict should be 'not guilty'."

"2. Statements alleged to have been made by the accused to officials or agents of the Government after arrest, unless prefaced by a warning that answers thereto would be used against the accused, must not be considered by the jury in determining the guilt of the accused."

"(Exception noted for the defendants to the refusal of points 1 and 3 which were not read, jointly and individually, by direction of the court.)"

XX. The Court erred in qualifying certain points for charge submitted by the defendants by adding comments thereto (testimony, page 245) as follows:

"Point number two is:

"If the jury can only determine guilt on the part of the accused from evidence based on books, papers, printing or writing taken from the accused by Government officials or agents, then the verdict should be not guilty."

"Assuming this means that you should be instructed to disregard the value as evidence of these books and papers because of the means through and from which they happen to be before you, I negative that point. These are all in the case, and are to be considered by you.

"If the point means, however, that their guilt would appear if you considered only that evidence, and nothing else, but would not appear if you considered some other evidence in the case, if it means that, then I affirm it, or, in other words, my instructions are to you that you are to consider and give due weight to all the evidence, books, and papers, included."

As objected to (testimony, pages 251-252) as follows:

"Mr. Nelson: Will your Honor grant me an exception to those points for charge which you refused to affirm?"

"The Court: Yes, I will give you an exception to the points disaffirmed, and I will give you an exception to the points qualified, and an exception to all the comments made upon the points, other than a clean affirmance.

503 "(Exception noted for the defendants, as above indicated, jointly and individually, by direction of the court.)"

XXI. The Court erred in qualifying certain points for charge submitted by the defendants by adding comments thereto (testimony, pages 246-247) as follows:

"5. Under the first Amendment to the Constitution freedom of speech and of the press cannot be abridged, and people can only be held responsible for any injury resulting from their utterances."

"I cannot affirm that just in the words in which it is written, 'Freedom of the press' and 'freedom of speech' are rights not only which exist, but they are rights which have the sanction of the supreme law the sanction of the Constitution of the United States, and for that matter of the Constitution or Bill of rights of every State in the Union, and indeed wherever the idea and thoughts of law as understood by English speaking people exist, every man has the right of free speech. Certainly each and every one of us would have a feeling of sadness if there was a possibility of it being taken away from us. We have the right of free speech, but we have no right to violate the law, or, as it is commonly expressed, while we have the right and privilege of free speech, we are responsible for the abuse of it, and if in the assertion, mistaken or otherwise, of what we regard as the right of free speech, we violate the law, we are answerable for the violation, and our right of free speech will not save us. A number of illustrations have been given to you. A man has a right to write what he believes, but if what he writes is a libel upon some one, if it blackens the reputation of one who is living or blackens the reputation of the dead, the man who puts forth that libel has the right of free speech, including the right to write, but if he has been guilty of libel, he may be punished for it, and so with any other crime of which he may be guilty."

As objected to (testimony, pages 251-252) as follows:

"Mr. Nelson: Will your Honor grant me an exception to those points for charge which you refused to affirm?"

"The Court: Yes. I will give you an exception to the points disaffirmed, and I will give you an exception to the points qualified, and an exception to all the comments made upon the points, other than a clean affirmance.

"(Exception noted for the defendants, as above indicated, jointly and individually, by direction of the court.)"

XXII. The Court erred in qualifying certain points for charge submitted by the defendants by adding comments thereto (testimony, pages 247-248) as follows:

504 "6. Unless the jury finds from the evidence that the defendants wrote the newspaper articles complained of or were responsible as editors of Kova for their publication, they cannot be found guilty as to this charge."

"I affirm that with this qualification. You will bear in mind that the charge is not that they did these things; the charge is a conspiracy to do them. Every man who had any part or share, who participated in the doing of an act, is responsible for the act, and the act really is the publication and not the writing of the article. For instance, if a man publishes an article, or has a part in its publication, he may have had no part or share in the writing of the article, he may even have had no knowledge that it had been written until after it was done, and knew absolutely nothing about it, but if the act which is complained of is the publication, and he had a part or share in it, then he is answerable."

As objected to (testimony, pages 251-252) as follows:

"Mr. Nelson: Will your Honor grant me an exception to those points for charge which you refused to affirm?"

"The Court: Yes. I will give you an exception to the points disaffirmed, and I will give you an exception to the points qualified, and an exception to all the comments made upon the points, other than a clean affirmance.

"(Exception noted for the defendants, as above indicated, jointly and individually, by direction of the court.)"

XXIII. The Court erred in qualifying certain points for charge submitted by the defendants by adding comments thereto (testimony, pages 248-249) as follows:

"8. If the jury finds from the evidence that the editors of Kova were Vidikas and Stalioraitis, the defendants Stilson and Sukys cannot be held responsible for the acts of these editors in publishing the various news articles and editorials in Kova."

"I will have to qualify that point, by again reminding you that the charge here is one of conspiracy, that they conspired together with these persons named and with another person who is also named in the indictment, and if the conspiracy existed, and any one of these conspirators, any one who was *along* those who were acting together,

committed any one of these overt acts, then the charge of conspiracy is made out."

As objected to (testimony, pages 251-252) as follows:

"Mr. Nelson: Will your Honor grant me an exception to those points for charge which you refused to affirm?"

505 "The Court: Yes. I will give you an exception to the points disaffirmed, and I will give you an exception to the points qualified, and an exception to all the comments made upon the points, other than a clean affirmance.

"(Exception noted for the defendants, as above indicated, jointly and individually, by direction of the court.)"

XXIV. The Court erred in refusing to grant a new trial because the indictment under which the defendant was tried was bad for duplicity, all as set forth in the fifth heading of the Trial Judge's opinion dismissing the motion for a new trial (filed November 26, 1918, pages 6-9).

XXV. The Court erred in not directing the jury to find a verdict of not guilty in favor of the defendant on the ground that Title I, Section 3 of the Act of June 15, 1917, C. 30, was unconstitutional, on the ground of conflict with the First Amendment to the Constitution, guaranteeing the right of free speech.

Wherefore the defendant prays that the judgment of the District Court may be reversed.

HENRY J. GIBBONS,
HENRY JOHN NELSON,
Attorneys for Defendants.

[Endorsed:] Dist. Ct. U. S., East Dist. Pa. #114, June Sess., 1918.

503 In the United States District Court for the Eastern District of Pennsylvania, June Sessions, 1918.

#114.

UNITED STATES OF AMERICA

vs.

JOSEPH V. STILSON, JOSEPH SUKYS, K. VIDIKAS, and J. V. STALIO-
RAITIS.

Præcipe for Transcript of Record.

(Filed Dec. 11, 1918.)

To the clerk of the said court:

The Transcript of Record in connection with the Writ of Error in the above case to the Supreme Court of the United States should

contain Docket Entries, Indictment, Writ of Error, Bill of Exceptions, Opinion Refusing New Trial, Judgment, Petition for Writ of Error, Order Allowing Writ of Error, Assignments of Error, Clerk's Certificate, and no others.

(Sgd.)

(Sgd.)

HENRY J. GIBBONS,
HENRY JOHN NELSON,
*Attorneys for Defendants Joseph
V. Stilson and Joseph Shukys.*

507 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, George Brodbeck, Clerk of the District Court of the United States for the Eastern District of Pennsylvania, do hereby certify, that the annexed and foregoing is a true and faithful copy of so much of the pleas and proceedings in the case of United States of America vs. Joseph V. Stilson, Joseph Sukys, K. Vidikas and J. V. Stalioraitis, No. 114 June Sessions, 1918, as per præcipe filed, a copy of which is hereto attached, the transcript of record in the above entitled case is to include, and now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said District Court at Philadelphia, this 24th day of December in the year of our Lord one thousand, nine hundred and eighteen and in the one hundred and forty-third year of the Independence of the United States.

[Seal of the District Court of the United States, E. D. Penna.]

GEORGE BRODBECK, *Clerk.*

Endorsed on cover: File No. 26,881. E. Pennsylvania D. C. U. S. Term No. 795. Joseph V. Stilson, plaintiff in error, vs. The United States of America. File No. 26,882. Term No. 796. Joseph Sukys, plaintiff in error, vs. The United States of America. Filed January 6th, 1919. File Nos. 26,881 and 26,882.

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JAMES D. M

BRIEF OF PLAINTIFFS IN ERROR

The Supreme Court of the United States

OCTOBER TERM, 1918

No. **264**

JOSEPH V. STILSON, Plaintiff in Error,

VS.

THE UNITED STATES OF AMERICA.

No. **265**

JOSEPH SHUKYS, Plaintiff in Error,

VS.

THE UNITED STATES OF AMERICA.

**IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.**

HENRY JOHN NELSON,
Attorney for Plaintiffs in Error.
1011 Chestnut Street, Philadelphia, Pa.

PRESS OF ALLEN, LANE & SCOTT, PHILADELPHIA.

FILED SEPTEMBER 19, 1919.

(26,881)

(26,882)

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26,882.

THE
Supreme Court of the United States.

OCTOBER TERM, 1918.

No. 795.

Joseph V. Stilson, Plaintiff in Error,

vs.

The United States of America.

No. 796.

Joseph Shukys, Plaintiff in Error,

vs.

The United States of America.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

I. ABSTRACT OF THE CASE.

This is a writ of error made in behalf of the defendants, Joseph V. Stilson and Joseph Shukys, who were convicted of conspiracy:

1. Under Section 4, Title I of the Espionage Act of June 15, 1917, 40 Stat. 217, 219, to violate certain provisions of Section 3 of the Act, to wit, "* * * whoever, when the United States is at war, shall wilfully cause or attempt to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces of the United States, or shall wilfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine of not more than \$10,000, or imprisonment for not more than twenty years, or both," and

2. Under Section 37 of the Criminal Code, to wit, "If two or more persons conspire * * * to commit any offense against the United States * * *, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both," to violate certain provisions of the Selective-Service Act of May 18, 1917, 40 Stat. 80, to wit, Section 5, referring to persons subject to registration.

The questions involved (owing to the fact that many questions which might have been raised have been decided by the Supreme Court, unchanged in personnel, since the passage of the Espionage and Selective Service Acts) narrow down to:

1. Whether or not, in ruling that there could be no severance of defendants and that a peremptory challenge by one defendant should count as a challenge by all defendants, the trial Judge was in error under Article VI of the Amendments to the United States Constitution.

2. Whether or not the trial Judge erred in his charge to the jury in that portion thereof in which he said the jury might determine the guilt of the defendants from general information.

3. Whether or not the trial Judge erred in not refreshing the jury's memory as to the evidence.

4. Whether or not the trial Judge erred in overruling a motion to take the case away from the jury, and in refusing to charge the jury, "Under all the evidence your verdict should be 'not guilty.'"

The defendants were indicted jointly with two others, as above set forth, on September 10, 1918. They were found guilty by a jury on October 4, 1918, the two others having left the jurisdiction of the Court and not having been apprehended. The acts alleged against the defendants occurred between June 1 and September 7, 1917, and consisted in publishing and distributing reading matter in the shape of mimeographed circulars and printed newspapers in the Lithuanian language. The reading matter referred to is reproduced in the Transcript of Record (pages 4-25). The acts alleged to have been committed by the defendants and to constitute the crime charged in the indictment are not the same under the two counts. The overt acts under Count 1 number nine (R. 4-23); under Count 2 they number two (R. 24, 25). The defendants were sentenced, after a motion for a new trial and argument, on December 6, 1918, to: Stilson, three years imprisonment, and Shukys, three months imprisonment.

II. SPECIFICATION OF ERRORS.

The four questions involved are raised, as follows:—

1. By an exception granted to the ruling of the trial Judge, refusing to grant a severance of the defendants (R. 63); and by exceptions granted by the trial Judge to the refusal to allow challenges for each of the defendants alone (as to Stilson, R. 31, 33) (as to Shukys, R. 33, 35).

2. By an exception granted by the trial Judge (R. 224), to that portion of his charge to the jury (R. 216, 217), which reads as follows:—

"The next question for you to determine is the presence of *essential elements*. One of them is, for instance, that the United States is at war. Secondly, that what was done was an *attempt to cause insubordination*, or what was done did amount to *obstructing enlistment*, and the question may arise in your mind how are you to determine *that*. Whenever you are asked as a jury to pass upon anything which is a matter within *common knowledge*, common information, things which people ordinarily know, which are generally and practically universally known, when you are passing upon such questions, you have the right to call upon your *general knowledge and information*. You must determine, *for instance*, the question whether or not we are at war, because unless we are, this indictment goes for nothing. You may determine that from your general information this something of which, in the phrase of the law, the law takes *judicial notice*. So also when you come to determine the question of whether or not there was an attempt to cause *insubordination*, you take, of course, all the evidence into the case, and you have a right to direct your minds, as naturally you would, to the character of these publications themselves, these pamphlets and these articles, and determine from them, *assisted by all the other evidence in the case*, whether or not they do reach the dignity of the charge of *attempting to cause insubordination*; or amount to an *obstruction of enlistment*."

3. By that part of the trial Judge's charge to the jury (R. 214, 215), which reads as follows:—

"Therefore, you get down to the evidence in the case. I do not intend to delay you by going over it, because it is fresh in your memories, and I could not adequately discuss it without going over all of it, and that would take up an unnecessary amount of your time. It has been discussed by counsel with a fairness

on both sides and with an ability that I am sure has been refreshing to all of you. It is with the highest gratification that anybody connected with the trial of cases experiences the atmosphere of not only fairness, but the atmosphere of candor and consideration for each other, that has been manifested throughout this case by counsel both on the one side and on the other, and I am sure you have appreciated that to the same extent as has the Court."

4. By an exception granted by the trial Judge (R. 121, 122), to a motion to dismiss the charges against both defendants and take the case from the jury; and by an exception granted by the trial Judge to defendants' point 1, requesting the trial Judge to charge (R. 223), namely:—

"1. Under all the evidence, your verdict should be 'not guilty.'"

III. ARGUMENT.

1. AS TO A SEVERANCE AND AS TO A CHALLENGE BY ONE DEFENDANT COUNTING AS A CHALLENGE FOR ALL DEFENDANTS.

The sixth amendment to the Constitution of the United States reads in part as follows:—

"In all criminal prosecutions, the accused shall enjoy the right to a * * * trial, by an impartial jury * * *."

It is admitted, the question of a severance is a matter within judicial discretion, but it did seem to the defendants in such a serious case, where the defendants were manifestly, if guilty, of different degrees of guilt, that a severance should be granted, especially, since they were, individually, denied their full number of challenges. The motion, refusal and

exception may be found on page 63 of the Transcript of Record.

This leads to a consideration of the challenges.

Juror No. 55, Jacob H. Lamor (R. 31), was challenged by the defendant Stilson, individually. He was satisfactory to the defendant Shukys (R. 33).

Juror No. 53, William P. Kinsey (R. 33), was challenged by the defendant Shukys, individually. He was satisfactory to the defendant Stilson (R. 35).

The trial Judge ruled that each of the above challenges should be counted against both of the defendants and granted an exception in each case to his ruling (R. 33, 35).

Subsequently, both of the defendants challenged seven additional members of the panel (No. 73, R. 44, 45), (No. 90, R. 47, 49), (No. 34, R. 49, 50), (No. 50, R. 52, 53), (No. 17, R. 53, 54), (No. 49, R. 54, 56), (No. 23, R. 59, 60).

The Government challenged two members of the panel (No. 71, R. 45, 46), (No. 82, R. 28, 29).

All of the above challenges were peremptory challenges. In view of the fact that the trial Judge had made his ruling with regard to peremptory challenges, as above set forth, it was manifestly impossible for either of the defendants to make additional challenges and maintain his right to individual challenges, since, under the trial Judge's ruling, a total of nine challenges had been allowed, and both of the defendants had only exercised their right for a total of eight challenges. In other words, each of the defendants claimed a right to ten challenges, and, therefore, a right to two more challenges than those already exercised; while, under the trial Judge's ruling, both of the defendants were only entitled to one additional challenge.

By the Act of March 3, 1911, C. 231, Sec. 287, after stating the number of challenges, it provides:—

“And in all cases where there are several defendants
* * * the parties * * * shall be deemed a
single party for the purposes of all challenges * * *.”

In U. S. *vs.* Marchant, 12 Wheat. 480, 481.

Mr. Justice Story said, "Upon a joint trial, each prisoner may challenge his full number, and every juror challenged as to one, is withdrawn from the panel as to all the prisoners on the trial, and thus in effect, the prisoners in such case possess the power of peremptory challenge to the aggregate numbers to which they are respectively entitled. This is the rule clearly laid down by Lord Coke, Lord Hale and Serjeant Hawkins, and indeed, by all the elementary writers." This decision was rendered under the Act of 1790 which did not contain a provision as set forth in the Act of 1911 as above noted.

In U. S. *vs.* Hall, 44 Fed. 883 (1890), under the Act of 1840, which contained a provision similar to the one above noted, it is true it was held that such a provision (1) did not deny the defendants an impartial jury (Article VI, Amendment to Constitution) and (2) was not unconstitutional. But this case was not fully argued, and was not decided by the Supreme Court.

There is a practical side to this question which is bound to work hardship to individual defendants under certain circumstances. If such is the case, the Act cannot remain law, since it would sometimes work hardship and sometimes not work hardship. The result would not be *impartial* to the defendants in many cases.

Such a case would arise where the number of defendants was odd and the number of challenges allowed was even. Suppose, as in this case, ten challenges were allowed to the defendants, and there were three defendants, and suppose that each defendant was antagonistic to both of the others and each defendant had separate counsel. Manifestly, if one defendant used four challenges and each of the others used three challenges, all of the challenges would be used up, and no more would be allowed, even if the second and third defendants wanted to make an additional challenge. This would be giving more rights to one defendant than to the others, and would, in effect, be an "unequal administration of the law," which is just

as much forbidden under our decisions as the enforcement of a law which is unequal in its terms. Certainly, such is the law under the Fourteenth Amendment with respect to the States.

Indeed, this same condition of affairs could arise where there was an even number of challenges allowed, say ten, and there was an even number of defendants, say four. In such a case, it might happen that the defendants would, through force of circumstances, have one, two, three and four challenges each, respectively, though every one of those having less than four challenges might wish to exercise more challenges.

It is only where the number of defendants divided into the number of challenges gives an equal quotient *AND where the Court, by rule or otherwise, divides up the challenges equally*, that the law could be made to apply equally.

This matter, presumably, has not come before the Supreme Court, but it is now the law as borne out by practice.

2. AS TO THE CHARGE TO THE JURY THAT IT MIGHT DETERMINE THE GUILT OF THE DEFENDANTS FROM GENERAL INFORMATION.

The second specification of errors gives the full text of the trial Judge's charge in this respect, together with the references to the Transcript of Record. It was a fair statement to the jury with regard to judicial notice; but, at the same time, it had directly connected with it other matter which had no reference to judicial notice and which, undoubtedly, had its effect on the minds of the jury, which presumably was not familiar with the technical meaning of judicial notice.

The defendants think that judicial notice is for the Court to charge the jury, while admitting that the mere question as to whether or not we are at war is a trivial point to raise; but, further the defendants think that linking judicial notice as an attribute of a jury's functions in the patent case of war or no war with the difficult case of

determining an attempt to violate law from an inspection of documents worked a great hardship on the defendants and tended to jeopardize their case with the jury.

In *Mobile, etc., R. Co. vs. Ladd*, 92 Ala. 287,
and *Cash vs. State*, 10 Humpr. (Tenn.) 111,
it was held to be the duty of the Court to charge the jury in the trial of a cause as to the existence of facts of which judicial cognizance is taken.

There is no doubt a jury may act on matters of common observation within their general knowledge WITHOUT ANY TESTIMONY on those matters; but they are matters of general knowledge, as, for example, the following:—

Gin is intoxicating.

Comm. vs. Peckham, 2 Gray (Mass.) 514.

Children are invariably curious and play about unprotected lumber piles.

Murdock vs. Summer, 22 Pick. (Mass.) 156;

Spengler vs. Williams, 67 Miss. 1.

Common abbreviations of words.

Matters of history.

Things of universal and even local recognition.

Division of time, &c.

Ad infinitum.

But here the jurors in their examination had said that they knew nothing about the case, had not read or heard or talked about it, &c. How then could they "so also" take judicial notice and decide the meaning of documents from general information, the existence of war, the turmoil of society, the common information about spies, the common knowledge about plots?

The defendants think this part of the charge to the jury lessened the jurors' sense of responsibility, to be guided only by the evidence and not by their beliefs as members of the community.

In *People vs. Harris*, 77 Mich. 568, for instance, it was held error for the Court to tell a jury they were not at liberty to disbelieve as jurors what they would believe

as men, and that their oath imposed on them no obligation to doubt where no doubt would exist in its absence.

Likewise in *Adams vs. State*, 135 Ind. 571,
and *Siberry vs. State*, 133 Ind. 677.

In *Hale vs. State*, 122 Ala. 85,
the charge that the jury has a right to look to the reasonableness of any testimony, and if they believe any testimony unreasonable and contrary to their observation and experience they may disregard it, was held misleading, the Court saying: "It (the part of the charge) makes the whole test of the reasonableness of testimony by the jury to depend on the fact that they think it reasonable according to their own experience and observation."

"Judicial notice or knowledge is the cognizance of certain facts which judges and juries may, under rules of legal procedure or otherwise, properly take and act on WITHOUT PROOF because they already know them," is the definition given by the "Cyclopedia of Law and Procedure."

McKelvey on Evidence, 2d ed., page 18, says:—

"The doctrine of judicial notice is that there are certain facts of which the COURT will not require evidence, because they are so well known, so easily ascertainable or so related to the official character of the Court that it would not be good sense to do so."

But here there was TANGIBLE evidence. Certainly the Court did not mean to say to the jury: "You can decide whether or not there is a war from your common knowledge of affairs; *likewise* you can decide from these documents AND your common information whether or not these people attempted to cause insubordination and did obstruct recruiting."

Negatively, it is no invasion of the province of a jury for the Court to state in its charge that it will take judicial knowledge of facts that courts notice without proof.

People vs. Mayes, 113 Cal. 618;

Koch vs. State, 115 Ala. 99;

Cash vs. State, 10 Humphr. (Tenn.) 111.

3. AS TO THE TRIAL JUDGE NOT REVIEWING THE TESTIMONY FOR THE BENEFIT OF THE JURY.

The trial Judge did not attempt to refresh the jury's memory as to the evidence, which ran into three full days (R. 214, 215); and he did not point out that, even though the case was conspiracy, certain of the evidence did not apply directly to the defendants on trial.

It is admitted that recapitulation of the evidence is discretionary with the trial Judge as to DETAIL.

11 Ency. Pl. & Pr. 199, 200;

Fowler vs. Smith, 153 Pa. 639.

It is also admitted that the trial Judge is not bound to recapitulate ALL OF THE EVIDENCE.

Allis vs. United States, 153 U. S. 117.

But the Court should not omit or slur over the strong points on either side.

Borham vs. Davis, 146 Pa. 72.

Though the evidence is conflicting, each party is entitled to have the law given to the jury which is applicable to his theory of the case and the TESTIMONY of his witnesses.

Sperry vs. Spaulding, 45 Calif. 549.

In this case, the defendant's evidence as to the time a note was made and transferred was contradicted by the payee and endorsee. The jury might have *inferred* from this that all of the defendant's testimony was untrue. Held, it was the Court's duty to instruct the jury, and the defendant was entitled to the instruction, that it did not necessarily follow from the contradictory testimony that all of defendant's testimony was untrue.

In this case, there were two theories. The Government contended that the defendants were conspirators because they belonged to the same organization (The Lithuanian Socialist Federation); and because, though they held dif-

ferent positions in such organization, they occupied the same room in a building where the printed matter was published. The defendants, on the other hand, contended that no conspiracy was proved; because, while admitting the facts urged by the Government, there was no proof that there was any understanding, tacit or otherwise, between the defendants as to such publication, and no proof, first, that the defendant Stilson took part in such publication, except as to one newspaper article with his name printed at the bottom thereof, and, second, that the defendant Shukys, had anything to do with it, except as a paid employee, not knowing the subject matter on which he did mechanical work.

4. AS TO ALL THE EVIDENCE WARRANTING A VERDICT OF "NOT GUILTY" BY DIRECTION.

It is true, of course, "If the case should have gone to the jury, the jury were the sole judges of the facts put before them;" and no one could say that they had decided wrongly. The question is: "Should the case have gone to the jury?"

In this case, four people were accused of conspiracy, two only being present. Three groups of overt acts were offered in testimony: (1) a single mimeographed circular, (2) general newspaper articles and (3) one article signed by one of the defendants on trial. There was no evidence to show either of those on trial responsible for the articles under (2) except that they worked in the same room where the paper was published and that one of the defendants, for purposes of mailing, filled out a post office form and called himself manager and his co-defendant secretary. On the contrary, there was direct evidence that they had nothing to do with what was published, except in the case of (3) where Stilson admitted he wrote the article. There was nothing to show the connection of either defendant with (1) except that a typewriter found on the premises may have cut the stencil from which it was mimeographed,

and that the one circular was found on the premises in a pigeonhole over the desk of an editor who was also indicted but had fled the jurisdiction.

That the defendant Stilson might be guilty under the espionage act under (3) is conceivable; but the Government evidently thought such a case was weak, so they *dropped such an indictment* and coupled him with three others under a general charge of *conspiracy*.

But Shukys does not even have this against him. There was no attempt to show he ever wrote anything or used the typewriter.

Outside of the fact that the two defendants were confessedly pacifists and Socialists, there was nothing to show any concerted action or any responsibility, other than stated above in reference to Stilson and (3), though the jury might have *guessed* that both defendants knew or ought to have known what was published.

"Proof of mere suspicion, or bare knowledge, that the act is being done by others, without such intentional participancy in or connection with it, is not sufficient. * * * mere knowledge, without more * * * would not make the person a party to the acts."

U. S. vs. Newton, 52 Fed. 275.

Granting the connection of Shukys with the publication of Kova, is he responsible for the acts of the editors, when he is not shown affirmatively to have wilfully and knowingly participated in any wrongful act? There is a Pennsylvania case along this line where a conspiracy prosecution was based upon the collective wrongful acts of a school board and all the members were convicted. The Superior Court set aside the verdict holding that where certain members were guilty as proved, others merely because of membership on the board could not also be convicted, but "it must be shown affirmatively that such members participated with the others in the criminal confederation."

Comm. vs. Tilly, 33 Super. 35.

"It is not sufficient to connect any officer or agent of the company with the conspiracy that they knew of it or acquiesced in it. They must by word or deed have become a party to it."

Patterson *vs.* U. S., 222 Fed. 631.

As to the defendant Stilson who was not connected with the publication of the paper as editor or manager, does not the case of Marrash *vs.* U. S., 168 Fed. 225, apply, where the Court said:—

"We are unable to find sufficient evidence against Habib Marrash. There are some suspicious circumstances and facts which seem to indicate that he had knowledge of the illegal nature of the transactions, but there is nothing which rises to the dignity of proof *required in criminal cases*. Knowledge by an alleged co-conspirator that the other defendants were attempting to defraud is not enough. Mere suspicion that he was a party to the conspiracy is not enough."

As to both Stilson and Shukys in the light of a charge of conspiracy, ought not the language used in McClarty *vs.* U. S., 191 Fed. 518, to be applied:—

"Imputation to one person of the acts of another cannot in criminal cases find adequate basis in mere moral or argumentative considerations. Criminally a man can only be held responsible for what he does or actually procures to be done."

and again:—

"A mere failure on the part of the conspirator to prevent another from doing the act of his own volition cannot be sufficient (to establish a conspiracy on his part) unless we disregard clearly established canons of statutory interpretation."

Although only one article was directly connected with one defendant, the Government was allowed, after informal

remonstrance by the defendants, to send out with the jury a great mass of printed matter, typewritten articles, newspaper files, &c., the very volume of which would tend to make the jury believe that "where there was so much smoke there must be some fire." Where the Government had 34 formal exhibits of record (R. 185), they were physically connected with or bound to thousands of other papers, especially in the case of the files of the newspaper, Kova. In some cases an exhibit consisting of a few lines of printed matter was sandwiched in with a whole bound volume of the issues of the newspaper. The very weight and volume of the exhibits and their impedimenta were bound to have their effect upon any jury.

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STATEMENT OF THE CASE.

The indictment contained two counts.

The first charged a conspiracy between the defendants Stilson and Sukys, together with two persons named Vididas and Stalioraitas, to violate section 3 of the so-called espionage act by causing insurbordination and obstructing recruiting in the military forces of the United States by the publication of a certain leaflet in the Lithuanian language entitled "Let us not go to the Army," and other leaflets dealing with the draft, and also by publishing certain articles and editorials in "The Kova," a socialist newspaper in the Lithuanian language. A number of these publications were set out as overt acts. (Rec. 4-23.)

The second count (Rec. 24) charged a conspiracy by the same persons to abet, induce, and procure certain members of the Lithuanian Socialist Federation, who should become subject to the military law of the United States under the selective-draft act, to desert the service of the United States in time of war. As overt acts the indictment charged the publication of certain articles in "The Kova" dealing with the draft and the articles and leaflets charged under the first count.

It would seem from the record (Rec. 24, 233) that both the pleader and the trial court were of the opinion that the second count charged a conspiracy to violate section 5 of the selective-draft act, 40 Stat. 80; but that section does not punish desertion, nor indeed does any other Federal statute dealing

with the civil courts, the offense being a military one. Section 42, Criminal Code, covers the offense of enticing a soldier to desert, but the second count does not charge such an offense with sufficient precision and the evidence at the trial was not directed to such a charge. The Government, therefore, will not press the second count but will confine the argument to the first. The sentences (Rec. 236) being less than the maximum permitted under the first count, if the conviction on that be proper, the judgment must be affirmed.

No demurrers were filed, the defendants pleaded not guilty, and after a full and noticeably impartial trial they were convicted. A motion in arrest of judgment was overruled (Rec. 230-235), and they were sentenced, Stilson to three years and Sukys to three months (Rec. 236). To these judgments the present writs of error were sued out.

ASSIGNMENTS OF ERROR.

The assignments of error (Rec. 240-258) number 25.

In so far as those assignments are concerned which raise the point of the constitutionality of the Espionage Act, numbers 2 (overruling motion in arrest of judgment), 7 (overruling motion for verdict), 21 (charge of court as to freedom of the press), 25 (similar to 7), this Court having since decided that the point is not well taken, these assignments must be disregarded except in so far as assignments 2 and 7 raise other questions.

Assignments 2 (motion in arrest), 3, 5, and 6 raise the question of the right of each defendant, where several are indicted for a conspiracy, to the full number of peremptory challenges provided for in section 287, Judicial Code.

Assignment 4 relates to the overruling of a challenge for cause. It is so wholly without merit that it will not be further noticed in this brief.

Assignments 2 (motion in arrest), 10, 11, 12, and 20 relate to the use in evidence of certain papers seized under a search warrant.

Assignments 2 (motion in arrest), 8, 9, 17, and 19 relate to testimony of statements made by the defendant Stilson after he had been placed under arrest.

Assignments 1 and 24 relate to the overruling of a motion for a new trial. As such action can not be assigned as error under the Federal practice, these assignments will not be further noticed in this brief.

Assignment 16 relates to the exclusion of evidence offered on behalf of the defendant Sukys that former charges against him for the same offense either had not been pressed or had been ignored by the grand jury.

All the other assignments bear upon the general question, viz, whether the defendants were properly convicted or not, in connection, partly, with the charge to the jury by the trial court.

ARGUMENT.

I.

Assignments of Error 2, 3, 5, and 6.

Defendants jointly indicted for a conspiracy are not entitled to several peremptory challenges to the full number authorized by law, nor was there abuse of discretion in denying a severance.

(a) The grant of separate trials to defendants is a matter of discretion, and the exercise of such discretion will not be reviewed on writ of error. *United States v. Ball*, 163 U. S. 672; *Sparf v. United States*, 156 U. S. 51; *United States v. Marchant*, 12 Wheat. 480.

(b) It would seem that at the common law joint defendants had the right to challenge separately to the full number allowed by law. *United States v. Marchant*, 12 Wheat. 480, 481.

(c) The rule was changed by the act of June 8, 1872, 17 Stat. 282, amending in this respect section 2 of the act of March 3, 1865, 13 Stat. 500 (Rev. Stat. sec. 819, Jud. Code sec. 287), and providing that—

“in all cases where there are several defendants, the parties shall be deemed a single party for the purposes of all challenges under this section.”

The statute is unambiguous, and has uniformly been construed to cover cases of joint indictments or indictments of several for a conspiracy. *United States v. Hall*, 44 Fed. 883; *Emanuel v. United States*, 196 Fed. 317, 320, 321; *Kettenbach v. United States*, 202 Fed. 377, 382; *Schwartzberg v. United*

States, 241 Fed. 348, 351. See also *Mutual Life Insurance Company v. Hillmon*, 145 U. S. 285, 293. In the case of *Schwartzberg v. United States*, *supra*, the court used the following language:

"The present Federal statute (in the respect under consideration) is much older than the Judicial Code, having passed from a statute of 1865 into section 819, Rev. St. (Comp. St. 1916, sec. 1264). *United States v. Hall* (C. C.) 44 Fed. 883, 10 L. R. A. 323. It certainly enlarged the common law, in that peremptory challenges were given in civil causes (*Stone v. Segur*, 11 Allen (Mass.) 568), and removed that doubt in respect of criminal trials not involving capital punishment, reflected in the older writers, and many cases (Blackstone, Bk. 4, p. 353; *Gray v. Reg.*, 11 Cl. and F. 427; *United States v. Shackelford*, 18 How. 588, 15 L. Ed. 495). But it did not change nor seek to alter the accepted method of interpreting the word 'party,' nor the rights of several defendants to the same indictment. Such defendants have always been regarded as one party, there is a legal obligation on them so to act, and the law (absente any statutory change) insists on so treating them. The very decisions relied on by these plaintiffs in error sustain this historical position. *State v. Cady*, *supra*; *People v. McCalla*, 8 Cal. 301; *People v. O'Laughlin*, 3 Utah, 133, 1 Pac. 653; *Cochran v. United States*, 14 Okl. 108, 76 Pac. 672; *State v. Jacobs*, 106 N. C. 695, 10 S. E. 1031. And see, generally, Thompson and M. on Juries, p. 299 et seq.

"It results that the contention becomes this, viz., that a body of defendants (in civil or criminal causes), or any one of them, may, by refusing to act in the manner prescribed by statute and imposed by historic interpretation, render any peremptory challenge impossible, or the exercise of the right by others illegal. Whether in this case the trial judge would have been justified in treating defendants' refusal to act jointly as a surrender or waiver of all peremptory challenges need not be considered; he chose the gentler method of exceeding the statutory limit, and, in favor of the accused, granted to each in severalty a reasonable share of the right they had jointly declined.

"This was a proper exercise of discretion, furnishing no ground for complaint, fundamentally because (as above stated) challenge is but the right to reject up to the legal limit, and such right does not inhere in any particular one of a plurality of either plaintiff's or defendants, but in the defendant or plaintiff party considered as a unit. When that party refused to act as a party, it was not error to save the right by discretionary subdivision."

(d) The statute is of course constitutional, since the Constitution merely gives the defendant the right to trial by an impartial jury. It does not stereotype the number of peremptory challenges. In *United States v. Shackelford*, 18 How. 588, it is recognized that the matter of peremptory challenges is governed by municipal law, and in *United States v. Hall*, *supra*, it is specifically held by Judge Speer that section 819, R. S., is constitutional.

The only reason advanced by the plaintiffs in error for the claim that the statute is unconstitutional is that it discriminates against joint defendants to such an extent as to deny them due process of law. This would only be the case, however, if the placing of joint offenders in a class separate from single offenders was grossly arbitrary and unreasonable, which, of course, it is not. On the contrary, the classification is eminently sensible. In the first place the defendants make the class themselves by their voluntary action. They determine whether their action shall be joint or several. In the second place, a joint offense is by its very nature a more serious matter to the State than a several offense. In the third place, to allow each one of many joint defendants as many peremptory challenges as he would be entitled to if tried separately would be to embarrass the due prosecution of joint offenders to the extent of a *reductio ad absurdum*. Thirty joint defendants each claiming a right to challenge peremptorily ten of the jury panel would bring the administration of criminal justice into contempt. That a regulation by the legislature of the matter of challenges does not deny due process of law, or deny privileges and immunities, or improperly discriminate, has been decided by this court in the following cases: *Hayes v. Missouri*, 120 U. S. 68, 71; *Brown v. New Jersey*, 175 U. S. 172, 176; *Gardner v. Michigan*, 199 U. S. 325, 333; *Lang v. New Jersey*, 209 U. S. 467, 472; *Shevlin-Carpenter Company v. Minnesota*, 218 U. S. 57, 69.

The above conclusion seems to be admitted by plaintiffs in error in their brief at pages 7 and 8, but it is contended that the result is prejudicial to a particular defendant desiring to challenge where his codefendant does not. On principle the claim seems to be answered by Judge Story in *United States v. Merchant, supra*, viz., that the right of challenge is not a right to select the jury but merely to exclude *personae non gratae* from it. As a matter of practice, if indeed the question ever really becomes serious as such a matter, the procedure adopted by the lower court and approved by the Court of Appeals in *Schwartzberg v. United States, supra*, seems to point a way out of the difficulty.

II.

Assignments of Error 2, 10, 11, 12, and 20.

A warrant of search and seizure, presumably under Title XI of the Espionage Act, was executed at the place of business where "The Kova" and certain other papers and pamphlets were issued under the direction of the Lithuanian Socialist Federation, of which the defendants were officers. Certain issues of "The Kova" and of pamphlets were seized, and some of them were offered in evidence at the trial. No objection was ever made to this seizure until that upon which the present assignment of error is made. The point is, therefore, entirely governed by the decision of this court in *Schenck v. United States*, 249 U. S. 47, 50.

III.

Assignments of Error 2, 8, 9, 17, and 19.

There was no error committed in receiving testimony of Stilson's admissions made after his arrest.

This whole subject is gone into so thoroughly and with such due appreciation of the balancing considerations on both sides by the present Chief Justice in *Bram v. United States*, 168 U. S. 532, that there is practically nothing further to be said. In the case at bar there was not a particle of pressure, let alone duress, used upon Stilson to compel him to say anything, nor were any inducements, direct, indirect, or of any other character offered him in any way. Therefore, the only point which his counsel can urge is that the police officer did not warn the defendant under arrest that anything he might say would be used against him. The common law, while it has gone a long way in favor of the person charged with crime, has never gone so far as to hold, as a matter of law, that the State must urge the alleged offender not to confess. As a matter of fact, there is no more satisfactory proof to the human mind of the commission of a crime than the confession of a person that he committed it. In spite of cases where such confessions, it is claimed, have been false, common sense declares that a man will not, under any conditions existing in the last two hundred years, confess himself guilty of a crime which he did not commit. Looking at the present record fairly, with every desire to protect the just rights of the defendant, nothing appears resembling in the least star chamber

proceedings or those disapproved by this court in *Bram v. United States, supra*. As to the failure to warn Stilson that he was under arrest and that any statement made by him would be used against him, the point is ruled adversely to plaintiff in error in *Bram's Case* at pages 557, 558. The same ruling was made in *Powers' Case*, 223 U. S. 303, 313, relying on *Wilson's Case*, 162 U. S. 613.

IV.

Assignment of Error 16.

The evidence as to an alleged previous refusal to arrest or prosecute Skys was rightly excluded.

Such testimony was irrelevant to the issue before the jury. That issue was whether or not Sukys was guilty of a violation of law, on the evidence presented at that trial; not whether the prosecuting officers or the grand jury had thought him guilty or innocent at some previous time on the evidence then before them.

V.

Other Assignments of Error.

There was substantial evidence to go to the jury of the guilt of both of the defendants under count 1, and the case was fairly submitted to them by the trial judge.

(a) It is admitted that the publications complained of in count 1 of the indictment and at the trial emanated from the place of business organized and conducted by the Lithuanian Socialist Federation at 229 North Sixth Street, Philadelphia. The arrangement of this place of business is described on pages 114 to 116 of the record. The Lithuanian Socialist

Federation was, like other Socialist organizations, and like the national organization to which it belonged (Rec. 122, 133), opposed to the entry of the United States into the war or its continuance therein. It is admitted that there was not and is not now any legal objection to such an attitude, in and of itself. It is necessary, however, to understand the conditions under which the publications complained of were made, and an important element in such an understanding is the general attitude of the Lithuanian Socialist Federation to which the defendants belonged. It is a matter of history that the National Socialist Party, at its convention in St. Louis split into two parts, each of which published its views and that this split was precisely at the point of the attitude of the party toward the war, the conservative or right wing refusing to oppose the Government in the war, while continuing to condemn war in general, and the left or radical wing advocating mass or direct action; that is, actual opposition to the Government in the execution of its war measures with the hope of a proletarian revolution. The point is brought out with sufficient clearness by Government exhibit 26, Rec. 203, which was signed by the defendant Stilson and published in "Kova." All of the publications set out in count 1 and offered in evidence at the trial show that the Lithuanian Socialist Federation belonged to the left or radical wing.

The connection of the defendants and of the other persons mentioned in count one with the

Lithuanian Socialist Federation was as follows: Stilson was the secretary of the federation, elected by vote of its members. (Rec. 68, 69, 122, 123, 140.) It is true that the word "translator" was attached to his title, and that some point was perhaps attempted to be made of this. The function of translator was, however, purely subsidiary, and arose from the necessity of translating communications from and to the National Socialist Party. His essential duties, however, were clearly those of a secretary, and he himself so describes them. (Rec. 122.) His office was at the place from which these pamphlets were issued, and at which "Kova" and other papers (Rec. 140, 141) were published. He was clearly a person exercising high authority there.

The defendant Sukys was manager of this business so carried on by the federation. His name was carried as such on the issues of "Kova" (Rec. 120), and his own testimony (Rec. 150, 151, 157, 158) shows that he performed the usual functions of a business manager. In addition he had been a correspondent of "Kova" before he became business manager (Rec. 155, 158), and, what is of more importance, he was a member of the executive committee of the federation during the time he was business manager. Some confusion as to this may be caused by what appears at Record, 160, until it is understood that he was business manager *de facto* before he became such *de jure*. (Rec. 155.)

The other persons mentioned in the indictment, namely, Vididas and Stalioraitas, were respectively

editor and assistant editor of "Kova," the former elected by vote of the members (Rec. 71, 72) and the latter appointed by the literary committee. (Rec. 67.) While it is of no particular importance, it should be explained, perhaps, that these two persons, while sought for by the Government, have never been apprehended. (Rec. 85.) There is nothing to show that the defendants have been prejudiced thereby. Indeed, it might be claimed that they have benefited, since there is no attempt to deny that the publications complained of were in fact prepared, printed, and issued by somebody connected with the business of the Lithuanian Socialist Federation in Philadelphia, and the absence of the editor and assistant editor enables the defendants to cast the responsibility upon them.

The two defendants had their offices at 229 North Sixth Street in practically the same room with the editor and assistant editor of Kova (Rec. 115, 116), and spent practically all their working time there (Rec. 129, 151), Stilson having the desk at which was located the typewriter (Rec. 115). Other papers were published at this place beside Kova (Rec. 140, 141), with which Stilson and Sukys were connected, but with which the editors of Kova were not connected. In addition the pamphlets or leaflets complained of under count 1 were printed at and issued from the same place, but had no connection with Kova. There was evidence connecting Stilson directly with Exhibit 1, "Let us not go to the Army," in that it was made by mimeographing from

a typewriter through the medium of a stencil. There was a typewriter, mimeograph, and stencil in the Kova office, and an expert testified not only that Exhibit 1 was made by this particular typewriter, in connection with the last-named articles, but that it was made from the same typewriter as a production of Stilson (Rec. 99-114). Stilson used these instrumentalities for the production of writings (Rec. 74, 76, 141, 142), such as Exhibit 24 (Rec. 199), and produced the same by cutting stencils on this typewriter (Rec. 141), and, while there was evidence that other persons used the typewriter, there was no claim that anyone else used the stencil or mimeograph. Stilson told the witness, McHenry, that no one used the typewriter but him (Stilson) (Rec. 83-88). Sukys paid for the supplies used in these various pamphlets and newspapers and for the printing of them (Rec. 157, 161). Stilson's admitted productions related to the same subject matter as Exhibit 1 (Rec. 185, 199, 207). The same sentiments expressed in Exhibit 1 are expressed in part in Exhibit 26, which is admittedly the production of Stilson (Rec. 145, 146, 185, 207).

There can, therefore, be no doubt that the jury was justified in finding Stilson and Sukys guilty of a conspiracy to publish the papers emanating from the Kova place of business, and that some of the conspirators, to further the object of the conspiracy, did the overt acts set out in count 1.

(b) As to whether there was evidence to go to the jury that these publications, under all the surround-

ing circumstances, obstructed recruiting or caused insubordination, or were an attempt to do either, it would be a waste of time to argue at length. They do not differ from those held sufficient for conviction in the cases of Schenck, Frohwerk, and Debs. Indeed, they seem to go somewhat further, for they seem clearly enough, for all practical purposes, to advise direct resistance to the requirements of the selective-draft act. Recruiting was then being carried on in that vicinity for the military and naval forces (Rec. 70), and Buragas, who received one of the circulars, was a soldier in the Army of the United States (Rec. 76-79).

(c) The above is deemed sufficient as to those assignments, viz, 7, 10, 11, 12, 14, 19, 22, and 23, which are in substance based on the claim that there was a failure of proof as to defendants' connection with the conspiracy.

As to the charge of the court, and especially as to assignment 18, dealing with that part of it telling the jury that they could call upon their general knowledge and information as to those matters which are generally known, the whole charge was noticeably fair to the defendants, and they could have taken no prejudice from what was said. Without admitting that there was anything in the least erroneous in the charge, it is certain that the jury would have called upon their own general knowledge of the world, and that this knowledge would have had a considerable effect in determining whether the publications

complained of obstructed recruiting or caused insubordination, whatever the court might have charged them upon the subject.

That a trial jury may take notice of matters of general knowledge is held by this court in *Head v. Hargrave*, 105 U. S. 45, 49, where it is said:

While they (the jury) can not act in any case upon particular facts material to its disposition resting in their private knowledge, but should be governed by the evidence adduced, they may, and to act intelligently they must, judge of the weight and force of that evidence by their own general knowledge of the subject of inquiry.

In *Commonwealth v. Peckham*, 2 Gray, 514, it was held that a jury could find gin intoxicating without any evidence on the subject. Metcalfe, J., delivering the opinion of the court, said:

Now everybody who knows what gin is, knows not only that it is a liquor, but also that it is intoxicating. And it might as well have been objected that the jury could not find that gin was a liquor without evidence that it was not a solid substance, as that they could not find that it was intoxicating without testimony to show it to be so. No jury can be supposed to be so ignorant as not to know what gin is. Proof, therefore, that the defendant sold gin is proof that he sold intoxicating liquor. If what he sold was not intoxicating liquor, it was not gin.

In *Hoare v. Silverlock*, 12 Q. B. 624, the Court of Queen's Bench refused to interfere with the verdict of a jury holding the term "frozen snake" to be libelous.

(d) As to the third point made in the brief on behalf of plaintiff in error at page 11, complaining that the trial judge did not review the testimony for the benefit of the jury, it is sufficient to say that this objection was not made the matter of any assignment of error, nor was any exception taken to the charge of the court on this score. In *Bird v. United States*, 180 U. S. 356, 361, this court said:

It is well settled that the defendant has a right to a full statement of the law from the court, and that a neglect to give such full statement, when the jury consequently fall into error, is sufficient reason for reversal. The numerous decisions to this effect are cited in Wharton on Criminal Law, vol. 3, sec. 3162, 7th ed. The chief object contemplated in the charge of the judge is to explain the law of the case, to point out the essentials to be proved on the one side and the other, and to bring into view the relations of the particular evidence adduced to the particular issues involved.

BILL OF EXCEPTIONS.

The bill of exceptions in this case is subject to the same objection made by the Government in the case of *Schaefer v. United States*, No. 270, October term, 1919, viz., that it does not comply with paragraph 2 of rule 4 of the Court, since it does not contain only

so much of the evidence as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, being nothing more nor less than a transcript of the stenographer's notes of what occurred at the trial. For that reason either the bill should be disregarded or every possible presumption should be allowed favorable to the propriety of the proceedings at the trial.

CONCLUSION.

The judgment of the court below should be affirmed.

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Attorney.





SUPREME COURT OF THE UNITED STATES.

Nos. 264 and 265.—OCTOBER TERM, 1919.

Joseph Stilson, Plaintiff in Error,
264 *vs.*

The United States of America.

Joseph Sukys, Plaintiff in Error,
265 *vs.*

The United States of America.

In Error to the District
Court of the United States
for the Eastern District of
Pennsylvania.

[November 10, 1919.]

Mr. Justice DAY delivered the opinion of the Court.

The plaintiffs in error were indicted with two others, not apprehended, and were convicted under the conspiracy section (4) of the Espionage Act, 40 Stat. 217, 219. The section which the plaintiffs in error were charged with a criminal conspiracy to violate (3), provides: “. . . whoever, when the United States is at war, shall wilfully cause or attempt to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces of the United States, or shall wilfully obstruct the recruiting or enlistment service of the United States, shall be punished by a fine of not more than \$10,000, or imprisonment for not more than twenty years, or both . . .”

A second count in the indictment charged a conspiracy to violate certain provisions of the Selective Service Act. The sentences imposed, within the Act upon either count of the indictment, were three years' imprisonment for Stilson and three months for Sukys. The Government does not press the conviction upon the second count.

The overt acts charged to have been committed in pursuance of the conspiracy consisted of the publication and distribution of a certain newspaper called “Kova” and circulars published in the Lithuanian language. The cases come directly to this Court because of constitutional questions raised and decided in the court below. Since the proceedings in that court some of the constitu-

tional questions have been determined, and need not be considered. *Schenck v. United States*, 249 U. S. 47; *Frohwerk v. United States*, 249 U. S. 204; *Debs v. United States*, 249 U. S. 211.

Counsel for plaintiffs in error in view of these decisions only press for consideration certain assignments of error comprised in the following summary:

1. Whether or not, in ruling that there could be no severance of defendants and that a peremptory challenge by one defendant should count as a challenge by all defendants, the trial Judge was in error under Article VI of the Amendments of the United States Constitution.

2. Whether or not the trial Judge erred in his charge to the jury in that portion thereof in which he said the jury might determine the guilt of the defendants from general information.

3. Whether or not the trial Judge erred in not refreshing the jury's memory as to the evidence.

4. Whether or not the trial Judge erred in overruling a motion to take the case away from the jury, and in refusing to charge the jury, "Under all the evidence your verdict should be 'not guilty.'"

Of these in their order:

1. It is provided in the Sixth Amendment to the Constitution of the United States that in all criminal prosecutions the accused shall enjoy the right to a trial by an impartial jury. That it was within the discretion of the court to order the defendants to be tried together there can be no question, and the practise is too well established to require further consideration. The contention raised under the Sixth Amendment comes to this: That because plaintiffs in error were not each allowed ten separate and independent peremptory challenges they were therefore denied a trial by an impartial jury. The statute regulating the matter of peremptory challenges is clear in its terms and provides: "When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to six peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to six peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers."

The requirement to treat the parties defendant as a single party for the purpose of peremptory challenges has long been a part of

the Federal system of jurisprudence, it certainly dates back to 1865 and was adopted in the Revised Statutes, and has now become a part of the Judicial Code. § 287, 36 Stat. 1166. *Schwartzberg v. United States*, 241 Fed. 348. There is nothing in the Constitution of the United States which requires the Congress to grant peremptory challenges to defendants in criminal cases; trial by an impartial jury is all that is secured. The number of challenges is left to be regulated by the common law or the enactments of Congress. That body has seen fit to treat several defendants, for this purpose, as one party. If the defendants would avail themselves of this privilege they must act accordingly. It may be, as is said to have been the fact in the trial of the present case, that all defendants may not wish to exercise the right of peremptory challenge as to the same person or persons, and that some may wish to challenge those who are unobjectionable to others. But this situation arises from the exercise of a privilege granted by the legislative authority and does not invalidate the law. The privilege must be taken with the limitations placed upon the manner of its exercise.

2. It is insisted that there was prejudicial error in so much of the charge as is contained in the following language:

"The next question for you to determine is the presence of essential elements. One of them is, for instance, that the United States is at war. Secondly, that what was done was an attempt to cause insubordination, or what was done did amount to obstructing enlistment, and the question may arise in your mind how are you to determine that. Whenever you are asked as a jury to pass upon anything which is a matter within common knowledge, common information, things which people ordinarily know, which are generally and practically universally known, when you are passing upon such questions, you have the right to call upon your general knowledge and information. You must determine, for instance, the question whether or not we are at war, because unless we are, this indictment goes for nothing. You may determine that from your general information this is something of which, in the phrase of the law, the law takes judicial notice. So also when you come to determine the question of whether or not there was an attempt to cause insubordination, you take, of course, all the evidence into the case, and you have a right to direct your minds, as naturally you would, to the character of these publications themselves, these pamphlets and these articles, and determine from them, assisted by all the other evidence in the case, whether or not they do reach the dignity of the charge of attempting to cause insubordination; or amount to an obstruction of enlistment."

Certainly no prejudice could arise from an instruction that the jury might be supposed to know the fact that the Country was at war. As to the other part of the charge,—the jury were told to look at all the evidence, including the character of the publications, and determine from them whether there was an attempt to cause insubordination and a wilful obstruction of enlistment; in other words—whether they amounted to a substantial violation of the statute. We find no well-founded objection to this part of the charge. It is true this language was used in connection with the observations concerning judicial notice as to the Country being in a state of war, but we are of opinion, taking the charge together, that the question was fairly left to the jury upon the evidence in the part of the instruction which we have quoted, which left to it to determine whether the facts made a case coming within the denunciation of the statute.

3. It is contended that the court did not analyze and discuss the details of the evidence. The trial judge left matters of fact to the determination of the jury in a charge commendable for its fairness. Certainly the lack of discussion in detail does not amount to a valid objection; particularly in the absence of any specific request for comment upon any special phase of the testimony.

4. As to the contention that there was no evidence to warrant the convictions of the accused—it must be borne in mind that it is not the province of this Court to weigh testimony. It is sufficient to support the judgment of the District Court, if there was substantial evidence inculcating the defendants which, if believed by the jury, would justify the submission of the issues to it. It would serve no good purpose to set forth the contents of the newspaper articles and the circulars, the publication and distribution of which were alleged to be the overt acts in furtherance of the alleged conspiracy. That they contain appeals tending to cause disloyalty and refusal of duty in the military forces of the United States, and to obstruct the recruiting and enlistment service of the Government is sufficiently apparent on the face of the publications. That those who by concerted action prepared and circulated such writings could be found guilty of a conspiracy is equally clear. The connection of the plaintiffs in error with the Lithuanian Socialist Federation, whose membership was shown to be actively opposed to the prosecution of the war, is apparent from a perusal of the record. Stilson was the translator-secretary of the Federa-

tion. There is evidence tending to show that one of the circulars entitled: "Let us not go to the army" was mimeographed from the typewriter controlled and operated by him. Language of the same character as that set forth in the incriminating circulars is found in articles in evidence which were admittedly written by him.

Sukys had been a correspondent of "Kova", and was afterwards manager of the Kova printing plant and was appointed by the executive committee of the Federation, and incriminating acts of his are clearly shown in the record.

We agree with the trial court that there was ample testimony justifying the submission of the question of the guilt of the accused to the jury, who found both of the plaintiffs in error guilty of concerted action amounting to a conspiracy to violate the provisions of the Act. We find no error in this record, and the judgments are

Affirmed.

Mr. Justice HOLMES and Mr. Justice BRANDEIS, dissenting on the ground that as the sentence was upon a general verdict of guilty on both counts, one of which is not sustained, the judgment should be reversed.

A true copy.

Test:

Clerk Supreme Court, U. S.